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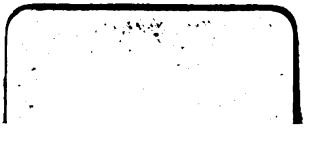

THE TRIAL OF *Archibald Stewart* Eſq; late Lord Provoſt of *Edinburgh*, Before the High Court of Juſticiary in *SCOTLAND*,

For Neglect of Duty, and Misbehaviour in the Execution of his Office, as Lord Provoſt of *Edinburgh*, before and at the Time the Rebels got Poſſeſſion of that City in the Month of *September* 1745.

Extracted under the Hand of the Clerk of Juſticiary, from the Books of Adjournal of that Court; and containing the whole Procedure had therein, from Mr. *Stewart*'s firſt Appearance before that Court, the 24th *March* 1747. till his final Acquittance therefrom, the 2d *November* thereafter.

EDINBURGH,
Printed for GIDEON CRAWFURD Bookſeller, and ſold at his Shop in the *Parliament-Cloſe*; and by the other Bookſellers in Town and Country. 1747.

226. i. 241.

The TRIAL of *Archibald Stewart* Eſq; &c.

Lord *Strichen* Præſes. *Curia juſticiaria S. D. N. Regis tenta in nova ſeſſionis domo burgi de Edinburgh, vigeſimo quarto die menſis Martii* 1747. *per honorabiles viros magiſtros Alexandrum Fraſer de Strichen, Patricium Grant de Elchies, & Carolum Areskine de Tinwald, commiſſionarios juſticiarii dict. S. D. N. Regis. Curia legitimè affirmata.*

THE which Day compeared *Patrick Haldane* of *Bearcroſts*, Eſq; his Majeſty's Solicitor, and Advocate-Depute, and produced, in Preſence of the ſaid Lords, a Writ of Recognizance, ſigned by his Grace the Duke of *Newcaſtle*, of Date the 23d Day of *January* laſt bypaſt, which was ordered to be read and recorded; and whereof the Tenor follows.

Middleſex and *Weſtminſter.*

To wit, be it remembred, That, upon the 23d of *January*, in the twentieth Year of the Reign of our ſovereign Lord *George* II. King of *Great Britain*, &c. came before me, and acknowledged themſelves to be ſeverally indebted unto our ſaid ſovereign Lord the King as follows, *viz.*

Archi-

Archibald Stewart of *Edinburgh* Merchant, the Sum of - - - L. 5000 0 0
David Scot of *Scotstarvet*, in the Shire of *Fife*, Esq; the Sum of - - 2500 0 0
James Oswald of *Dunnikier*, in the said Shire of *Fife*, Esq; the Sum of - - - - - - - - - - 2500 0 0
Alexander Campbel of the Parish of *Allhallows-Staining*, *London*, Doctor of Physick, the Sum of - - 2500 0 0
James Baird of *Downingstreet*, in the Parish of *St. Margaret's*, *Westminster*, Esq; the Sum of - - - 2500 0 0

To be levied upon their several Goods and Chattels, Lands, Tenements and Hereditaments, by Way of Recognizance, upon Condition, that if the said *Archibald Stewart* do personally appear before his Majesty's Court of Justiciary at *Edinburgh*, at the first Sitting of the said Court after the twentieth Day of *March* next, then and there to answer to all such Matters as on his Majesty's Behalf shall be objected against him, and also appear from Time to Time when thereunto required, and not depart the said Court without Leave thereof, and, in the mean Time, be of the good Behaviour, then this Recognizance to be void, or else to remain in full Force and Virtue. *Signed*

HOLLES NEWCASTLE.

Immediately after reading whereof, compeared the said *Archibald Stewart* Merchant in *Edinburgh*, and judicially sisted himself in Court before the said Lords, in Terms of and agreeable to the said Writ

Writ of Recognizance, and humbly inſiſted, that thereby the Condition of the ſaid Writ was fulfilled, and the ſame fell to be voided, and he diſmiſſed, if there was no Perſon on his Majeſty's Behalf ready to inſiſt againſt him.

To which Mr. *Patrick Haldane*, his Majeſty's Advocate-Depute, made Anſwer, That the Writ of Recognizance was not only for Mr. *Stewart*'s Appearance this Day, but thereafter, from Time to Time, when thereto required; that, having only had Occaſion lately to ſee the ſaid Writ, he was not juſt now ready to inſiſt in any Matters on his Majeſty's Behalf againſt the ſaid *Archibald Stewart*, as therein mentioned, and moved their Lordſhips would appoint a farther Time for his Appearance again.

Mr. *Stewart*, without making any Reply, ſubmitted his Caſe to the Court.

'The Lords Commiſſioners of Juſticiary, having 'conſidered the ſaid Writ of Recognizance, and 'above Debate, they continue the Diet, for the 'ſaid *Archibald Stewart*'s Compearance, to *Monday* 'the eighth Day of *June* next, and ordain him 'to ſiſt himſelf perſonally in Court that Day, with-'out Prejudice to the Lord Advocate to inſiſt againſt 'and proſecute the ſaid *Archibald Stewart* ſo offer-'in Behalf of his Majeſty, if he ſhall ſee Cauſe.'

Signed

ALEX. FRASER. *I. P. D.*

Curia

Lord *Strichen* Præſes.

Curia juſticiaria S. D. N. Regis, tenta in nova ſeſſionis domo burgi de Edinburgh, octavo die menſis Junii 1747. *per honorabiles viros magiſtros Alexandrum Fraſer de Strichen, Patricium Grant de Elchies, Carolum Areskine de Tinwald, & Hugonem Dalrymple de Drummore, commiſſionarios juſticiarii dict. S. D. N. Regis. Curia legitimè affirmata.*

THE ſaid Day, in Obedience to the foregoing Order, compeared the ſaid *Archibald Stewart*, and ſiſted himſelf in Court, when he and Meſſieurs *Lockhart*, *Ferguſon*, *Home* and *Stewart*, Advocates, his Procurators, inſiſted, That, in Obedience to the laſt Order of Court, in conſequence of the Recognizance therein mentioned, he had appeared a ſecond Time; that, as he pled firſt, ſo he now did, that the Condition of the ſaid Writ of Recognizance was fulfilled, and that the ſame ought to be voided, and he diſmiſſed, if there was no Perſon yet ready to inſiſt againſt him on his Majeſty's Behalf, which he had Reaſon to believe was the Caſe.

To which Mr. *Patrick Haldane*, his Majeſty's Advocate-Depute, made Anſwer, That the Lord Advocate, who, at the laſt Diet, attended the Service of his Country in Parliament, was contrary to Expectation ſtill detained, altho' he intended to have been in *Scotland* long before now, when he could and would have proceeded

ceeded to bring Mr. *Stewart* to Trial in the ordinary Way: That, for his Part, as Advocate-Depute, he had no ſuch Inſtructions as he could move in that Matter, either juſt now, or by a proper Proceſs; and all he was inſtructed to ask of their Lordſhips, was a Delay of eight Days, which could be no Prejudice either to Mr. *Stewart* or his Cautioners, and againſt which Time he was pretty well aſſured his Majeſty's Advocate would be preſent, and ſhew Cauſe why the Writ of Recognizance ſhould continue, and ſatisfy Mr. *Stewart* how or when he would be brought to Trial.

It was replied for Mr. *Stewart*, That he expected, if there was any Thing to be objected to him on Behalf of his Majeſty, conſidering the long Space of Time interveening betwixt this and his former Appearance, he would have been brought under ſome Proſecution for it ere now; that the Abſence of my Lord Advocate, however neceſſary, and his Depute's not being properly inſtructed, was to Mr. *Stewart* or his Cautioners nothing to the Purpoſe; that Mr. *Stewart*'s Appearance, now and before, and nothing objected to him, was, as to his Cautioners, a Liberation of their Bail, which was ſo very great as muſt appear to be a Hardſhip it ſhould laſt any longer: And therefore craved that he might be diſmiſt, and the Bond voided.

It was duplied by Mr. *Haldane*, That the Delay ſought was ſo ſmall, as plainly ſhewed that there was no Intention of putting a Hardſhip on any Perſon; and, without farther Argument, he doubted not but the Court would continue Mr. *Stewart*'s

Stewart's farther Compearance, in terms of, and agreeable to the Writ of Recognizance, till *Monday* next the 15th inſtant.

'The Lords Commiſſioners of Juſticiary, having 'conſidered the above Debate, they continue 'the Diet for the ſaid *Archibald Stewart*'s farther 'Compearance to *Monday* the 15th Day of *June* 'inſtant, and ordain him to ſiſt himſelf perſonal-'ly in Court that Day, without Prejudice to the 'Lord Advocate to inſiſt againſt and proſecute the 'ſaid *Archibald Stewart* ſooner, if he ſhall ſee 'Cauſe.' *Signed*

ALEX. FRASER. *I. P. D.*

Lord *Strichen* Præſes.

Curia juſticiaria S. D. N. Regis, tenta in nova ſeſſionis domo burgi de Edinburgh, decimo quinto die menſis Junii 1747. *per honorabiles viros magiſtros Alexandrum Fraſer de Strichen, Patricium Grant de Elchies, Carolum Areskine de Tinwald, & Hugonem Dalrymple de Drummore, commiſſionarios juſticiarii dict. S. D. N. Regis.*

Curia legitimè affirmata.

THE ſaid Day compeared the ſaid *Archibald Stewart*, in Obedience to the laſt Order of Court, and ſiſted himſelf agreeable to his Writ of Recognizance, and craved the ſaid Writ might be declared void, and he diſmiſſed, in caſe the Lord Advocate was not yet ready to inſiſt againſt him.

him, as, if he was, he had at leaſt got no Notice of it, nor ſo much as of any Time for his Trial.

The Lord Advocate thereupon appeared, and repreſented the former Delays were not owing to him, but, in ſome Meaſure, to Mr. *Stewart*'s own Friends, who applied to him at *London* for a Delay, till he ſhould come to *Scotland* and be preſent himſelf; which truly was the Reaſon of his not raiſing and executing a criminal Proceſs againſt Mr. *Stewart* to the laſt Diet he appeared. That, to ſhew his Lordſhip had no Inclination to give Mr. *Stewart* any unneceſſary Delay, he now was ready to inſiſt, and for that End gave in, and preſented to the Lords, a Bill ſigned by him, craving Warrant for criminal Letters againſt the ſaid *Archibald Stewart*, for the Crimes and Miſdemeanours therein mentioned, and fixing the Diet for his Trial to the third of *July* next.

Thereafter Mr. *Lockhart* moved, in Behalf of the Cautioners for Mr. *Stewart*, that the Writ of Recognizance ſhould be voided; and for Mr. *Stewart*, in Place thereof, that he was willing to find new Bail for any Sum the Lords ſhould appoint and judge reaſonable, as the Bail he was preſently under was by far too extravagant.

To which the Lord Advocate made Anſwer, That the Writ of Recognizance, on which Mr. *Stewart* was liberate, was ſtill in Force, and behoved to continue, as the Cautioners and Mr. *Stewart* not only became bound that he ſhould appear ſuch a Day, but, from Time to Time thereafter, as the Lords ſhould appoint, and not to depart, without Leave, out of the Court; that this

Bail was taken by and given to one of the highest Authority, and that it muſt neceſſarily continue, agreeable to the ſaid Writ, till he be diſmiſſed.

Whereupon Mr. *Stewart* himſelf, and Mr. *Elliot* his Procurator, waved the Motion made by Mr. *Lockhart* anent renewing the Bail, and agreed that the former ſtand good, and he had no Objection why the next Diet of Compearance might not be the third of *July* next.

The Lords Commiſſioners of Juſticiary, having conſidered the above Debate, they continue the Diet, for the ſaid *Archibald Stewart*'s farther Compearance, till *Friday* the third Day of *July* next to come.

Signed ALEX. FRASER, *I. P. D.*

Upon the third of *July* the Diet was continued to the thirteenth of that Month,

Curia juſticiaria S. D. N. Regis, tenta in nova ſeſſionis domo burgi de Edinburgh, decimo tertio die menſis Julii, 1747. per honorabiles viros magiſtros, Alexandrum Fraſer de Stricheu, Patricium Grant de Elchies, Carolum Areſkine de Tinwald, & Hugonem Dalrymple de Drumore, commiſſionarios juſticiarii dicti S. D. N. Regis.

Curia legitime affirmata.

Intran. *Archibald Stewart* of the City of *Edinburgh*, Merchant, and late Lord Provoſt of the ſaid City, Panuel,

Indicted

Indicted and accused at the Instance of *William Grant* of *Prestongrange*, Esq; his Majesty's Advocate, for his Majesty's Interest, for the Crimes of Neglect of Duty, and Misbehaviour in Offices and Places of publick Trust, and the Violation of the Trust and Duty of such Offices, in Manner at Length mentioned in the criminal Libel raised against him thereanent, making Mention, THAT WHEREAS, by the Laws of this and all other well-governed Realms, *all Neglects of Duty*, and *Misbehaviours* of Persons employed in Offices and Places of publick Trust, and all Violations of the Trust and Duty of such Offices, *are Crimes* of a high Nature, and severely punishable; and the publick Justice of the Realm requireth a vigorous Prosecution of such Offenders, *especially* when such *Neglects* of Duty and *Misbehaviours* are incurred by the *chief Magistrate* of any *great* or considerable *City*, in a *Time* of *publick Danger* and *open Rebellion*; *and particularly* by an Act made in the fourteenth Parliament of King *James* the Second of *Scotland*, Chapter seventy sixth, intitled, *The Punition of negligent Officiars*, 'It is *ordained* 'and *determined*, That if any of the King's Officiars or Sheriffs, Mayors, Bailies, Crowners, Serjeants, *Provosts of Burghs*, and their Ministers both to Land and to Burgh, be found *faulty* or *negligent* in the *Execution* of *their Offices*, and it may be *lawfully proved* on him, or *notourly kend*; if the said Office pertains to him in Fie and Heritage, he shall tyne his Office, and the Profit thereof, for an Year and a Day, and to be punished by the King in his Person and Goods after the Quantity of his Trespass; and if his Office

pertains

'pertains to him not in Fie and Heritage, he 'ſhall tyne his Office for all the Times he has it, 'and to be puniſhed in his Perſon, after the Quan-'tity of ſik Treſpaſs, at the King's Will.' YET TRUE IT IS AND OF VERITY, That the ſaid *Archibald Stewart* of the City of *Edinburgh*, Merchant, and late Provoſt of the ſaid City, is guilty, Actor, or Art and Part of the ſaid Crimes, or one or other of them, aggravated as aforeſaid; IN SO FAR AS he, being Lord Provoſt of the City of *Edinburgh*, in the Year One thouſand ſeven hundred and forty five, *when* a moſt bold, deſperate, wicked, and unprovoked Rebellion was raiſed and carried on againſt his Majeſty within this Realm, by a large Body of armed Traitors, headed by the Eldeſt Son of the Pretender to his Crown, and aſſiſted with Troops and Money from his Enemies abroad, and, at ſuch a Juncture, it being his Duty, as the chief Magiſtrate of the ſaid City, and the King's Lieutenant therein, having Authority to command the military Force of whatever Kind within the City, to have exerted himſelf with Fidelity, Vigilance and Zeal, for oppoſing the Progreſs of the Rebellion by all lawful Methods in his Power, and particularly for preſerving the City intruſted to his Care from falling under the Power of the Rebels, or becoming a Prey to them, he, the ſaid *Archibald Stewart*, was groſly faulty or negligent in the Execution of his ſaid Office and Duty on ſo important an Occaſion, in manifeſt Violation of the Truſt and Duty of his Office: *And particularly* was thus *guilty* on the Fifteenth and Sixteenth Days of *September*, in the Year of our Lord One thouſand ſeven hundred

and

and forty five, and upon ſeveral other Days and Times in the ſaid Month of *September*, and the Month of *Auguſt* preceeding, within the ſaid City of *Edinburgh*, where he was reſident for the Time. AND MOREOVER, the ſaid *Archibald Stewart* was not only *faulty* or *negligent* in the Execution of his Office, and notoriouſly known to have been ſuch, but was guilty of Malverſations and counteracting the Duty of his Office, in ſuch an Exigency, in many Inſtances, and particularly, amongſt others, in theſe following. *Firſt*, That whereas the Preſervation of the City of *Edinburgh* from falling into the Hands of the Rebels, was of great Importance to that City itſelf, and to the King and the Kingdom in general, and the Care of it eſpecially incumbent on the Lord Provoſt for the Time being, and ought to have been looked after with the utmoſt Attention, Zeal and Vigour, in ſuch an Exigency, as when the Rebels got to the ſouthward of the Body of the King's Troops under the Command of Sir *John Cope*, of which Advices came to *Edinburgh* in the latter End of *Auguſt* One thouſand ſeven hundred and forty five, from which there was Reaſon to fear that the taking of that City would be attempted by the Rebels, and to hope that the King's Army might ſoon after come to its Relief: Yet, in theſe Circumſtances, he the ſaid *Archibald Stewart*, then chief Magiſtrate, and ſole military Governor of that City, did nothing of his own Accord towards providing effectually for the Defence thereof; and, on the contrary, every Meaſure for that Purpoſe propoſed, and preſſed by the honeſt Zeal of the then Magiſtrates and Council, and of many of the Citizens and Inhabitants, inſtead of being

being heartily encouraged and promoted by him the Provoſt, were by him thwarted and retarded, or elſe abſolutely refuſed or declined; and in this Manner it was that he received a Propoſition made to him in the latter End of *Auguſt* One thouſand ſeven hundred and forty five, for raiſing a *Regiment* of One thouſand Men, by voluntary Subſcription, for Defence of the City; againſt which he formed Objections on account of the Expence, and affected Doubts concerning the Legality thereof. And, *ſecondly*, he treated in like Manner another Application made to him in the Beginning of *September* One thouſand ſeven hundred and forty five, by a Number of Gentlemen or Citizens, for Leave to aſſociate themſelves under his chief Command, as *Volunteers*, for the Defence of the City and Service of the Government; and, after his Objections to the Legality of that Meaſure were overruled, he would not ſuffer it to be publiſhed or given out that he *heartily approved*, but barely that he *acquieſced* in that Meaſure; and yet his Reluctancy or Averſion to it, or Uneaſineſs under it, continued to diſcover itſelf on frequent Occaſions, and particularly by the cold, if not the rude Manner in which he behaved towards thoſe *Volunteers*, conſiſting of a Number of very reſpectable Gentlemen and Burgeſſes, when he went to a publick Meeting of them, in the New Church Iſle of *Edinburgh*, to name their Captains. *Thirdly*, That, in like Manner, through the Misbehaviour of the ſaid *Archibald Stewart*, when certain Repairs of the *City Walls*, and other Works for making it defenſible for ſome Time, againſt an Enemy who had

no Artillery, and were very unskilful in making Sieges, had been propoſed and adviſed, amongſt others, by the now deceaſt and famous Mr. *Colin MacLaurin* Profeſſor of Mathematicks in the College of *Edinburgh*, and were ordered by the Council of the City of *Edinburgh* to be made, the Execution whereof was chiefly incumbent on the Lord Provoſt for the Time being, yet the ſame was carried on very ſlowly and imperfectly, notwithſtanding frequent Remonſtrances and Complaints made by divers of the faithful and zealous Inhabitants; and, as late as *Sunday* the Fifteenth of *September* One thouſand ſeven hundred and forty five, when the Rebels were marching to and were come within a few Miles of the City of *Edinburgh*, he the ſaid *Archibald Stewart* refuſed to give Orders for loading the Cannon planted upon the City Walls, and, about the ſame Time, he refuſed to apply for ſome of the Sailors from on board one of the King's Ships of War for managing of thoſe Cannon, when he could not otherways be provided of fit Perſons to act as Gunners. *Fourthly*, That, about the ſame Time, he the ſaid *Archibald Stewart* refuſed to liſten to, or to follow ſeveral ſalutary Propoſitions that were made and preſſed by well affected Inhabitants, for the greater Safety and better Defence of the City, ſuch as, that the *Trained Bands*, conſiſting of a promiſcuous Number of Burgeſſes, whereof many were known to be diſaffected, ſhould be laid aſide, as had been practiſed during the Rebellion in the Year One thouſand ſeven hundred and fifteen, and that Arms ſhould only be truſted in the Hands of ſuch as were known to be well affected, and that a ge-

neral

neral Search for *Arms* ſhould be made within the City, and that a Number of the ableſt bodied Men of the Tradeſmens Servants ſhould be employed and armed for aſſiſting to defend the City when it ſhould be attacked, upon the Encouragement of a Guinea to be given to each of them; towards defraying which Expence an Offer was made to the ſaid *Archibald Stewart*, on the Part of the Volunteers, to have raiſed or advanced the Sum of Five hundred Pounds *Sterling*. *Fifthly*, That the ſaid *Archibald Stewart* misbehaved himſelf in like Manner, in reſpect of the *Succours* that were brought at the Time aforeſaid from the Country in the Neighbourhood of *Edinburgh*, conſiſting of Numbers of well affected and zealous Subjects, under the Conduct of Gentlemen of known Loyalty and good Affection, who came and voluntarily offered their Service to aſſiſt in defending the City of *Edinburgh*, without any Fee or Reward, upon that dangerous and preſſing Occaſion, the Approach of the Rebels to that City; but theſe very ſeaſonable and laudable Offers were by the ſaid *Archibald Stewart* very coldly received and ill treated: For Inſtance, he propoſed to Sir *Robert Dickſon* of *Inveresk*, who came to *Edinburgh* upon *Sunday* the fifteenth Day of *September* One thouſand ſeven hundred and forty five, from *Muſſelburgh*, with about *One hundred and fifty* Volunteers, to offer their Services for the Purpoſes aforeſaid, that theſe Men ſhould inliſt themſelves for three Months as Soldiers in the *Edinburgh* Regiment; a Propoſition which, inſtead of being calculated ſincerely to provide for the better Defence of the City, could be no otherways received by

thoſe Volunteers, than as an Inſult and Diſcouragement to their Zeal, who, being Tradeſmen or Husbandmen, did not mean to leave their Occupations, and inliſt themſelves as Soldiers for Hire, but had bravely offered to ſerve *gratis* in the then preſent Exigency, which could not laſt above a few Days, before the End of which the City of *Edinburgh* muſt either have been relieved or ſurrendred. *Sixthly*, That, on the Morning of *Monday* the Sixteenth of *September* One thouſand ſeven hundred and forty five, the ſaid *Archibald Stewart* received a *Meſſage* from the Camp of the Rebels, by *Andrew Alves* Writer to the Signet, importing, that the City of *Edinburgh* would be ill treated by them, unleſs it ſhould be readily or ſpeedily ſurrendred, being a Meſſage to the ſame Effect with that contained in a Letter from the Pretender's Son, bearing Date from his Camp that ſame Day, addreſſed, *For the Lord Provoſt, Magiſtrates and Town-Council of* Edinburgh, and which Letter was thereafter that ſame Day delivered; and yet he the ſaid *Archibald Stewart* did not immediately commit the ſaid *Andrew Alves* to Priſon, for bringing or delivering to him ſuch Meſſage, neither did he give Notice to any other of the King's Officers, Civil or Military, that he had received ſuch Meſſage. *Seventhly*, That, upon the ſame *Monday*, the Sixteenth of *September* One thouſand ſeven hundred and forty five, about Three of the Clock in the Afternoon, he received a *Petition* from certain of the Inhabitants of the City who oppoſed the Defence thereof, and inſiſted to have a *general Meeting* called of all the principal Inhabitants, to conſult what was proper to be

done, and he accordingly held and preſided in a Meeting in the New Church Iſle in the Afternoon of that ſame Day, upon the ringing of the Fire-Bell, which was the appointed Signal for the Volunteers to repair to their Alarm-Poſt, the Conſequence of which was, that few or none of thoſe Volunteers, who conſiſted of a Number of the moſt ſubſtantial and beſt affected Burgeſſes, were or could be preſent at that general Meeting: In which Meeting, as every one who had a Mind got Acceſs, there were Numbers of Perſons preſent of known Diſaffection to his Majeſty's Government; and thus, by ill Deſign upon their Part, and by the Timidity of others who were thus aſſembled in a tumultuous Manner, and a very improper Council with which to take Meaſures in a Time of immediate and preſſing Danger, the general Cry was given for ſurrendring the City, and giving up all Thoughts of making a Defence: And the ſaid *Archibald Stewart* thus held and took the Senſe of this Meeting, notwithſtanding that before he went to it, it was very well known that the Rebels were *ill-armed*, and that an Offer had been made to him, in Aid of the other Forces with which the City was provided, to ſend one hundred out of two Regiments of Dragoons in the King's Service, or as many of the Dragoons of thoſe Regiments as he ſhould deſire, to aſſiſt in defending the City; but he refuſed to give his Conſent or Authority for receiving any of theſe *Dragoons*, tho' he had requeſted ſuch Party of Dragoons, about an Hour or two before in that ſame Day, by a *Writing* under *his Hand*, addreſſed to Lieutenant-General *Joſhua Gueſt* then in the Caſtle of *Edinburgh*,

burgh. AND MOREOVER, at this Meeting there was brought in and delivered to the ſaid *Archibald Stewart*, the *Letter* above mentioned from the Pretender's Son; immediately, or ſoon after the receiving whereof, that Meeting was diſmiſſed, and he, with others of the Magiſtrates and Council, withdrew to the Council-Chamber, where (*which is the eighth Article* charged upon him the ſaid *Archibald Stewart*) he cauſed or ſuffered the ſaid *Letter from the Pretender's Son* to be publickly read, and moved or agreed that an Anſwer ſhould be given to it, which was accordingly ſent, firſt by one, and then by another Deputation from the Council: All which *Intercourſe* was in him the ſaid *Archibald Stewart*, then Lord Provoſt, the more criminal, that any Danger or Neceſſity that might be alledged, in order to avoid the ſame, being puniſhable as HIGH TREASON, was owing in great Meaſure to his own Backwardneſs to diſcharge his Duty, by taking all the proper Precautions againſt ſuch Danger, with that Fidelity and Vigour which he owed, by his Allegiance and his Station, to the City of *Edinburgh*, and to the King and Kingdom. *Ninthly*, That all this While he the ſaid *Archibald Stewart* refuſed or neglected, tho' frequently applied to for that Purpoſe, to give any Orders to the *Volunteers* of the City of *Edinburgh*, who had been long ſtanding upon the Street under Arms, how or in what Manner they ſhould diſpoſe of themſelves, and employ theſe Arms, or how they ſhould diſpoſe of the *Arms*, if they were not to be uſed or employed for the Defence of the City, for which they had been firſt taken up; and, upon

on ſuch his Refuſal or Neglect, the ſaid Volunteers took and executed the Reſolution to carry back their Arms to the Magazine in the Caſtle of *Edinburgh*, in order to prevent the ſame from falling into the Hands of the Rebels. *Tenthly*, That, on the Evening of the ſame *Monday* the ſixteenth of *September* One thouſand ſeven hundred and forty five, he the ſaid *Archibald Stewart* refuſed or declined to give his Licence or Authority for a Party ſent by the ſaid Lieutenant-General *Gueſt*, or by Lieutenant-General *George Preſton*, Governor of the Caſtle of *Edinburgh*, to remove or ſpike up the *Cannon* that were then planted upon the City-Walls; and, about the ſame Time, he the ſaid *Archibald Stewart* gave Orders to *Thomas Dalziel*, one of the Captains of the City-Guard of *Edinburgh*, whoſe Turn it was to be on Duty that Night, to keep *Guard* with the uſual Compliment in peaceable Times, of one Third of the City-Guard, or Company, and no more; and, about the ſame Time, he the ſaid *Archibald Stewart* gave Orders to the Parties of the *Trained-Bands* of the City of *Edinburgh*, who had been upon Guard at the ſeveral Gates of the City, to quit their Poſts, and to diſpoſe of their *Arms* in the Parliament-Houſe, or ſome other Place or Places, where they muſt be expoſed to fall into the Hands of the Rebels, as ſoon as they ſhould enter or become Maſters of the City. And, *Eleventhly*, in the ſame Evening of the ſixteenth of *September* One thouſand ſeven hundred and forty five, it was propoſed and urged in Council, where the ſaid *Archibald Stewart* was preſent, and preſided, That the *whole City Arms*, being in Number

Number about *Twelve hundred Firelocks and Bayonets*, ſhould be lodged and ſecured within the Caſtle of *Edinburgh*, in order to prevent their falling into the Hands of the Rebels; but he the ſaid *Archibald Stewart* refuſed or *declined* to give any *Order* for that Purpoſe, neither in Fact were the City-Arms ſo lodged and ſecured, but were ſeized by the Rebels upon their entring the City the Day following, who came to *Edinburgh* ſo *imperfectly armed*, that the *Supply of Arms* which they *thus received*, appears to have been *one principal Cauſe* of the Diſaſter that befel the King's Forces near *Preſtonpans*, on the twenty firſt Day of the ſame Month of *September* One thouſand ſeven hundred and forty five. And, *laſtly*, by Occaſion or Means of the ſeveral Inſtances above-recited, and other Inſtances during the Time above mentioned, upon one or other of the Days of the Months of *Auguſt* or *September* One thouſand ſeven hundred and forty five, of the *Misbehaviour* of the ſaid *Archibald Stewart* within the City of *Edinburgh*, of which he was then Lord Provoſt, it came to be very notoriouſly known, that he was *highly faulty and negligent* in the *Execution of his Office*, and to be farther violently ſuſpected and believed, amongſt the King's faithful Subjects in that City, that he the ſaid *Archibald Stewart* was *ſecretly* in the *Intereſt* of the *Pretender*, by reaſon of the Uniformity of his Behaviour from the Beginning to the End of theſe Tranſactions, diſcovering a conſtant Unwillingneſs or Backwardneſs to provide for, or heartily proſecute the Meaſures that were in a Manner forced upon him, in order to the Defence of that City, at a Time when,

if

if he had obſerved a contrary Conduct, there was at leaſt a high Probability, that the City might have been preſerved from falling into the Hands of the Rebels: And in Fact the ſame did fall into their Hands, in a very ſtrange and ſuſpicious Manner, by a Party of the Rebels entring the City at the *Netherbow* Port, early in the Morning of *Tueſday* the ſeventeenth of *September* One thouſand ſeven hundred and forty five, when that Port was guarded with nothing more than a Serjeant's Command of the City-Guard, and was opened to ſuffer a Hackney-Coach to go out, which had juſt returned from bringing back the ſecond Deputation ſent by the ſaid *Archibald Stewart*, and other Magiſtrates and Counſellors of *Edinburgh*, to the Pretender's Son: ALL WHICH MISFORTUNES were, in great Meaſure, owing to the Miſconduct of the ſaid *Archibald Stewart*, and ſerved to bring a heavy Calamity on the City of *Edinburgh*, and the Kingdom in general; AT LEAST, at the Time and Place aforeſaid, he, the ſaid *Archibald Stewart*, being Lord Provoſt of the City of *Edinburgh*, was highly faulty or negligent in the Execution of his Office, at a Time of publick Danger and open Rebellion againſt his Majeſty. AND for proving that the ſaid *Archibald Stewart* was guilty, as aforeſaid, there would be produced againſt him, by Way of Evidence, beſides very credible Witneſſes, certain Documents in Writing, which ſhould be lodged in the Hands of the Clerks to the Court of Juſticiary, that he might ſee the ſame, and whereof a Liſt ſhould be delivered to him, alongſt with the Liſt of Witneſſes to be adduced againſt him. ALL WHICH enormous

mous Neglects of Duty, and Misbehaviours, or Part thereof, or his being Art and Part of the ſame, being found proven againſt the ſaid *Archibald Stewart* by the Verdict of an Aſſize, before the Lords Juſtice-General, Juſtice-Clerk, and Commiſſioners of Juſticiary, he, the ſaid *Archibald Stewart*, ought to be puniſhed with the Pains of Law, to the Terror of others to be guilty of the like in Time coming.

Purſuers.

William Grant of *Preſtongrange*, Eſq; his Majeſty's Advocate,
Mr. *Patrick Haldane* and Mr. *Alexander Home*, his Majeſty's Solicitors,
Mr. *Francis Garden*,
Mr. *John Grant*.

Procurators in Defence.

Mr. *James Ferguſon*,
Mr. *Henry Home*,
Mr. *Alexander Lockhart*,
Mr. *George Sinclair*,
Mr. *Charles Hamilton-Gordon*,
Mr. *John Stewart*,
Mr. *Gilbert Elliot*,
Mr. *David Dalrymple*,
Mr. *William Binning*.

The Pannel having, agreeable to a Clauſe contained in an Act paſt the laſt Seſſion of Parliament, intitled, *An Act for taking away and aboliſhing the heritable Juriſdictions in that Part of* Great Britain *called* Scotland, *&c.* given in to the Clerk in Writing a ſigned Account of the Facts relating

relating to the Matters charged upon him in the ſaid Libel, with the Heads of ſuch Objections or Defences ſubjoined, as he was adviſed to make at his Trial;

And the ſaid Libel being this Day openly read, and full Debate thereupon, and upon the ſaid ſigned Account of Matters of Fact, and Heads of Defences given in for the Pannel, in Preſence of the Pannel, Court and Jury,

'The Lords Commiſſioners of Juſticiary, in re-'ſpect of the Importance and Difficulty that 'may occur in this Caſe, and by virtue of the 'Power reſerved to them in the ſaid Act of Par-'liament, ordain both Parties to give in Informa-'tions to their Lordſhips and the Clerks of Court; 'the Purſuers to give in their Informations againſt '*Monday* the twentieth inſtant, at Six o'Clock at 'Night, and the Procurators for the Pannel to 'give in theirs againſt *Friday* thereafter, the twen-'ty fourth inſtant, at the ſame Hour; and, at 'the particular Deſire of both Parties, ordain the 'Clerks of Court to record the ſaid Informations 'in the Books of Adjournal, in Place of the Mi-'nute directed to be made up and ingroſſed in the 'ſaid Books by the Act of Parliament; and con-'tinue the Diet in this Cauſe, and the ſaid *Archi-'bald Stewart* his Compearance, upon his Bond 'of Recognizance formerly recorded, till *Friday* 'the thirty firſt of *July* current, at Four of the 'Clock Afternoon, in this Place; and ordain Par-'ties, Witneſſes and Aſſizers, then to attend, each 'under the Pains of Law.'

IN-

July 26. 1747.

INFORMATION for his Majeſty's Advocate, for his Majeſty's Intereſt, Purſuer,

AGAINST

Archibald Stewart *of the City of* Edinburgh, *Merchant, and late Lord Provoſt of the ſaid City, Pannel or Defender.*

THE Libel at the Purſuer's Inſtance, againſt Mr. *Stewart* late Lord Provoſt of the City of *Edinburgh*, charges him the Pannel with being guilty of very high Crimes and Miſdemeanours, in having many Ways acted contrary to his Duty, when he was chief Magiſtrate in the City of *Edinburgh*, in the Months of *Auguſt* and *September* 1745. a Time of publick Danger and open Rebellion, headed by the Eldeſt Son of the Pretender to his Majeſty's Crown, aſſiſted with Troops and Money from his Majeſty's Enemies abroad; at which Juncture the Pannel, by his *Misbehaviour*, ſuffered the City of *Edinburgh*, with the *Cannon* and *Arms therein*, as well as other Supplies of various Sorts, to fall into the Hands of the Rebels, in manifeſt Violation of the Truſt and Duty of his Office. This is the general Charge againſt the Pannel, which is in the Libel more particularly ſpecified, by a Deduction of many particular Inſtances of Misbehaviour alledged againſt him in ſupport of that general Charge, which Particulars it is unneceſſary here to repeat, but for them the Purſuer begs Leave to refer to the Libel itſelf.

The Pannel having been duly ſerved with a Copy of this Libel, did, firſt of all, in purſuance of the late Act of Parliament for aboliſhing the heritable Juriſdictions in *Scotland*, &c. give in to the Clerk of Court, the Day before his Trial was to come on, ſigned by one of his Council, his Account of the Facts relating to the Matters charged upon him, together with the Heads of certain Objections and Defences which he makes to the Libel, and therein ſays, 'That he is not guilty of 'all or any of the Neglects or Misbehaviours laid 'to his Charge, and that there is no Ground for 'ſuppoſing him diſaffected to the Government, 'but much to the contrary; and, in particular, 'he avers, that his Conduct, upon Occaſion and 'at the Time of the late Rebellion, will, upon 'Proof, afford the ſtrongeſt Evidence of his real 'Attachment to the Government;' and farther ſays, upon the ſeveral Matters charged againſt him,

In the *firſt* Article, 'That he thwarted no 'Meaſures that were propoſed, that ſeemed legal 'and expedient; that where any Doubts or Difficulties occurred, either as to the Legality or Expediency of any Particular propoſed, ſome of 'which ſeemed rather to be intended as a Snare, 'he delivered his Opinion with a becoming Freedom, ſubmitted his Reaſons to the Council or 'Committee, and heartily went into whatever 'they reſolved, after taking Advice, in Points of 'greateſt Importance, with thoſe who bore the 'higheſt Offices, both Civil and Military, that 'were at the Time in this Town.'

As

As to the *ſecond* Article of the Indictment, Mr *Stewart* ſays, 'That the Propoſal made for aſſo-'ciating a Body of Volunteers was a Point of ſo 'much Delicacy, as muſt juſtify him for deſi-'ring Advice as to the Legality of what was 'thereby propoſed. That, ſo ſoon as the Magi-'ſtrates found they could ſafely go into the Pro-'poſal, the Lord Provoſt readily acquieſced, and 'ſhewed a Willingneſs to have it carried into Ex-'ecution; and that, upon every Occaſion, he be-'haved towards them with the utmoſt Civility.'

As to the *third* Article, 'The Magiſtrates of *E-'dinburgh*, with the reſt of a Committee appoin-'ted by the Council to provide for the Defence 'of the Town, readily liſtned, and chearfully re-'ceived every Propoſal that appeared calculated 'for the Defence of the Town, in which nothing 'was by them delayed; and the Execution of 'theſe Matters was committed to proper Perſons, 'choſen and appointed for that Purpoſe by the 'Council and Committee.' He does farther ſay, 'That the Guns were charged in the proper 'Time, and all Endeavours uſed to ſupply the 'Town with proper Gunners.'

The Provoſt does in like Manner ſay, 'That 'what is looſely charged in this Article of the In-'dictment, of his having refuſed the Propoſals of 'thoſe who were zealouſly affected, is not well 'underſtood: Every Converſation was freighted 'with a Propoſal, many of them contradictory, 'and ſome of them from ſiniſter Motives; ſuch 'particularly was the Propoſal mentioned in this 'Article, which, if ſincerely meant, ought to have

'been

'been propoſed in Council, which never was 'done.'

As to the *fifth* Article, 'the Provoſt thinks he 'behaved kindly to every Man who came, or 'pretended that he came, to the Aſſiſtance of the 'Town; and denies the Inſtance charged in the 'Libel, nor can he imagine that it was, or can 'be preſumed an Affront, although he had offe-'red the putting Sir *Robert Dickſon*'s Volunteers 'in the Way of receiving Pay, ſuppoſing that to 'have been the Fact.'

As to the *ſixth* Article, 'Mr. *Stewart* appre-'hends there can be no Crime in it; for he did 'communicate the Meſſage by Mr. *Alves*, imme-'diately after he received it, to the Gentlemen of 'the Council, who were of Opinion, That the 'Meſſage delivered by Mr. *Alves* ought not to 'be divulged, for Fear of intimidating the Inha-'bitants; and ſoon after he waited of the then 'Lord Advocate, to impart that Affair, and get 'his Advice what ought to be done, and, con-'form to the Advice then given, committed the 'ſaid *Andrew Alves*, ſo ſoon as he underſtood that 'it was lawful and proper, and there was no cri-'minal Delay in committing him.'

As to the *ſeventh* Article, Mr. *Stewart* ſays, 'That the Meeting in the *New Church Iſle* was 'not in conſequence of any Petition delivered 'him by the Inhabitants, which Petition was ne-'ver once under Conſideration of the Committee, 'nor did he order the Alarm-Bell to be rung to con-'vocate the Inhabitants. Denies that he ever re-'fuſed to admit any Dragoons into the Town;

'but,

'but, on the contrary, he expreſſed a Willingneſs 'to receive them, providing they were ſent.'

As to the *eighth* Article, 'Mr. *Stewart* refuſes 'that he received or gave Orders to read any Let-'ters from the Pretender, or that he gave Orders 'in conſequence of any ſuch Letter; any Deputa-'tion that might have been ſent, was the Effect of 'the Fears of the Inhabitants, who had more of 'the Government of the Town at that Time 'than the Magiſtrates.'

As to the *ninth* Article, 'The Volunteers carri-'ed their Arms to the Caſtle without applying to 'Mr. *Stewart* for his Orders, and before he un-'derſtood the Town to be in a defenceleſs State.'

As to the *tenth* Article, Mr. *Stewart* ſays, 'That 'it was the Senſe of the Committee the Provoſt 'ſhould give no Orders; and he believes it will 'appear, that the Meſſenger from Mr. *Gueſt* was 'told he was at Liberty to ſpike up the Cannon, 'if the General thought proper; nay, he farther 'believes the Meſſenger was farther told, that he 'ſhould be ſhewn where the Cannon were. Mr. '*Stewart* does not remember that Captain *Dal-'ziel* was ordered to have but a Third of his 'Guard on Duty, but believes that the whole 'Guard at that Time were not in a Condition to 'do Duty, after the Fatigue they had previouſ-'ly undergone; the Inhabitants had before this 'Time reſolved not to ſtand upon their Defence; 'the Provoſt remembers nothing of the Orders 'ſaid to have been given to the Trained-Bands; 'but believes the contrary will be proven.'

As to the *eleventh* Article, the Provoſt repeats the firſt Part of his Anſwer to the preceeding Ar-

ticle,

ticle, and ſays, 'That if any of the City-Arms 'fell into the Hands of the Rebels, it muſt have 'proceeded from various unavoidable Cauſes, but 'cannot be imputed to any Fault of Mr. *Stew-* '*art.*'

As to the *twelfth* Article, 'Mr. *Stewart* is con- 'fident there muſt appear, upon his Part, a 'zealous Attachment to the Intereſt of the Go- 'vernment, by the Uniformity of his Conduct 'from the Commencement of the Rebellion, un- 'til the Time that the Town fell unhappily into 'the Rebels Hands; for ſuch is and muſt be the 'natural Conſtruction of his unwearied Applica- 'tion to every Part of his Duty, and upon con- 'ſidering the Propoſals made by him in Council, 'with the Directions given to thoſe that acted 'under him.'

From this Account of the Provoſt's Conduct, in relation to the Matters charged upon him, his Defences againſt the Libel are:

'1*mo.* That the whole of the Charge is laid in 'a Manner too looſe and general to be paſt to 'the Knowledge of an Aſſize.'

'2*do.* That the Facts therein contained are ei- 'ther miſrepreſented, or in their Nature not 'criminal.'

'3*tio.* That no Error in Point of Judgment, if 'any Thing of that Kind ſhall appear, ought to 'be made the Foundation of a criminal Proſecu- 'tion, eſpecially that he was only one of a Com- 'mittee, and acted by their Direction.'

Before the Purſuer proceed to recite the Argu- ments that were offered on Behalf of the Pannel, in Support of theſe Defences, when the Trial came

on

on in the Court of Juſticiary on *Monday* the 13th current, together with the Replies made on the Part of the Purſuer to theſe Defences, he ſhall here, for the better underſtanding of the true Merits of the Caſe, firſt of all briefly ſet forth, without any Argument, the principal Facts which occurred at and about the Time libelled, ſuch as he believes can be proved to be true, either by authentick Writings, or by parole Evidence.

The Lord Provoſt produced in Council a Letter from one of his Majeſty's principal Secretaries of State, by Direction of the Lords Juſtices, bearing Date 13th *Auguſt* 1745. giving him Notice, 'That they 'had received Intelligence that the Pretender's 'Son was already landed, or intended to land in 'Scotland, and recommending it to him the Lord 'Provoſt to exert his Care and Vigilance on this 'Occaſion, and make Uſe of ſuch Precautions 'as he ſhould judge neceſſary for preſerving the 'publick Peace within the City of *Edinburgh*.' And produced alſo a Copy of his Anſwer to that Letter, bearing Date 17th of *Auguſt*, promiſing, *inter alia*, 'not to ſit down in Security, but to 'keep a watchful Eye, in order to prevent, as 'far as poſſible, every Thing that might diſturb 'the Peace of this City;' of which Anſwer the Council approved. *23d Auguſt* 1745. *Council Record.*

The ſame Day the Council reſolved to levy and raiſe the Number of thirty Centinels to be added to the City-Guard, and recommended to the Lord Provoſt and Magiſtrates to direct and ordain the Captains and Subalterns of the Trained-Bands to make up full Liſts of the Perſons

belonging

belonging to their ſeveral Companies, and to report the ſame to the Magiſtrates againſt *Wedneſday* then next.

At the ſame Time another Order was made, for directing the Conſtables of the City, to make out Liſts of all the Inhabitants and Reſidenters within their ſeveral Bounds and Diſtricts, and that they be diligent in inquiring and finding out what Strangers may happen from Time to Time to come within this City, and lodge within their ſeveral Diſtricts; and that all Inn-Keepers, Stablers, and others, who lodge and entertain Strangers, ſhould, from Time to Time, and as oft as any Stranger ſhall lodge with them, give in to the Captain of the City-Guard, a Note of their Names and Deſignations at their Arrival, and of the Time of their Departure from thence, and order the Captains of the Guard to report to the Magiſtrates in Writing, every Morning, Liſts of the Particulars that ſhould be delivered in to them by the Inhabitants.

Tueſday, 27th Auguſt 1745. Theſe Reſolutions were reported by the Lord Provoſt, and the other Magiſtrates, with the Conveener of the Trades, to a Meeting of ſubſtantial and well affected Burgeſſes, which it had been propoſed to ſummon to give Advice on the preſent Occaſion. This Propoſal was made to the Lord Provoſt on the *Saturday* preceeding, being the 24th of that Month, by a Citizen of *Edinburgh*, who had been ſometime a Magiſtrate, and had been commiſſioned by other well-affected Citizens to propoſe ſuch Meeting to the Provoſt, as had been formerly practiſed on important Occaſions, and which he repreſented

as

as what they judged neceſſary at this Time, in order to take Meaſures for putting the City in a Poſture of Defence. This Propoſition the Provoſt received at firſt with a Sneer or Laugh; but, upon the other's preſſing him, as being the Opinion and the Wiſh of many ſubſtantial Burgeſſes, and what had been formerly practiſed on the like Occaſion, the Provoſt at laſt conſented that there ſhould be ſuch Meeting, but ſaid it could not be that Day, being *Saturday*, as many of the Burghers would be out of Town; and accordingly it was not held till the *Tueſday* following.

At this Meeting, which was held in the *New Church Iſle* at Five o' Clock in the Afternoon, conſiſting of a great Number of the moſt reſpectful Burgeſſes, of undoubted Loyalty to his Majeſty, they unanimouſly approved of the Steps already taken, and offered their Advice as to the farther Steps to be taken, and particularly 'that 'the *City* ſhould be forthwith put in a *Poſture of* 'Defence, and a *Body of Men* raiſed and armed 'for the Defence thereof and the Service of the 'Government.' The former of theſe could be of little Uſe without the latter; and to the latter the Provoſt objected, that the ſame would be treaſonable or illegal, without ſpecial Warrant from the Crown. They replied, That if a Warrant was neceſſary, that might be applied for and obtained. Then the Provoſt ſaid, That, ſuppoſing they ſhould get a Warrant, he doubted much if Money could be raiſed by Subſcription for paying them. To which laſt Objection it was anſwered by ſome Citizens of conſiderable Wealth and Credit there preſent, that they were ready to undertake and o-

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blige themſelves to find Money to pay a Regiment for three Months. Upon this it was reſolved that a Committee ſhould be named, out of the Council and of the other Burgeſſes, to conſult with and take the Advice of the Lord Juſtice-Clerk, and ſuch of the other Judges as could be found in Town, and his Majeſty's Advocate and Sollicitor, with regard to what farther Steps the Magiſtrates and Council and Community could legally take for preſerving the Peace of the City, and contributing to defeat the Deſigns of the Rebels; and next Day the Council named their Committee accordingly; the Reſult of which was, that Application was made to his Majeſty, in order to remove all Doubts, for his ſpecial Warrant and Licence to raiſe ſuch Regiment.

Saturday, Auguſt 31ſt 1745. Advice was received at *Edinburgh*, that Sir *John Cope*, with the Troops under his Command, inſtead of marching directly to the Rebels as he had propoſed, and was expected, had, upon his March at *Dalwhinnie*, the Place where the *Fort-Auguſtus* and *Inverneſs* Roads meet, marched foreward towards *Inverneſs*, whereby the Rebels were now got to the ſouthward of the King's Army, when there was no Force left to oppoſe their marching ſouthward where they ſhould think fit, which gave no ſmall Alarm to the Cities of *Edinburgh* and *Glaſgow*, and all the Country to the ſouthward of the Rivers or Friths of *Forth* and *Clyde*.

Monday, September 2. The Council of *Edinburgh* ordered the Town-Guard to be augmented to the full Number of 126 Men, Officers, Serjeants, and Drums included.

The

Eodem die. The deceaſt Mr. MacLaurin's Journal.

'The Accounts from the North becoming more and more unfavourable, above twenty Gentlemen of known good Affection to his Majeſty and the Government, met at Mris. *Clark*'s Tavern, and agreed to apply to the Lord Provoſt, that he would give Orders for putting the Town in as good a State of Defence as poſſible with all Expedition. It was complained of in this Meeting, that an Application which had been made the Week before to his Lordſhip had not met with due Encouragement, but that the Perſons who waited on his Lordſhip, and their Zeal, had been ridiculed, and made the Subject of inſipid Jokes. The Company (however) reſolved, that, whatever Diſcouragements they might meet with from thoſe whoſe Duty it was to have animated them, they ſhould meet frequently, and promote, to the utmoſt of their Power, whatever may tend to the Defence of the Town: In the mean Time they appointed two of their Number, a Gentleman who had formerly been a Bailie, and Mr. *MacLaurin*, to wait on the Provoſt next Morning, with a general Inſtruction to beg he would ſee to the Defence of the Town, and offer their Aſſiſtance; and three particular Inſtructions, *firſt*, That he would order making Moulds for Bullets, it having been found on Trial that all in the Shops had been bought up of late by Cadies, (or Link Boys) who had been ſent for them. 2*dly*. That the Sluice of the *North Loch*, by which the Water iſſues from it, ſhould be ſhut and ſecured, that it might fill up. 3*dly*. That

'That they ſhould propoſe to his Lordſhip the 'making a Diſtinction betwixt the Inhabitants of 'known good Affection, and ſuch as were ſuſpect-'ed, when he came to intruſt them with the 'Town's Arms, and take proper Meaſures that 'the City ſhould not be in Danger from within, 'as (had been taken) in 1715.

'Lord Provoſt gave a ſatisfactory Anſwer to the 'firſt two of theſe, but, as to the third, he did 'not give the Satisfaction deſired; but, after a 'good deal of Reaſoning, he ſaid, That, if the 'Town came to be attacked, he would ſo far 'make a Diſtinction as to intruſt the Town's 'Arms with the *moſt ſubſtantial Burghers*; he ſaid, 'That, if a thouſand Men had a Mind to get into 'this Town, he could not ſee how he could hin-'der them. In Anſwer to this, the Number of 'Trades Lads in *Edinburgh*, of the Gentlemen 'who would aſſociate to ſave the Town, the 'Unskilfulneſs the *Highlanders* had always ſhewn 'in attacking Stone-Walls, their Want of Artille-'ry, and being ill-armed, with the Aſſiſtance that 'would be got from the Dragoons in all Proba-'bility, were urged: It was inſiſted, our doing 'ſomething was requiſite to ſave the Reputation 'of the Town, to divert the Enemy from com-'ing this Way, and to raiſe a Spirit in the Coun-'try.'

'To this he anſwered, That, to pretend to do 'when we could do little, was to expoſe us to 'Ridicule. Other diſcouraging Expreſſions were 'uſed; but, at the End, he ſaid he would be glad 'of Advice from ſenſible Burghers, and have Re-'gard to it.'

'Little

Little material paſt till *September* the 5th, when the ſame Company, with ſome Addition of other Gentlemen, met at the ſame Place; and now the Danger appearing more imminent, they entred into an Aſſociation, as Volunteers, to ſerve for the Defence of the City, at the Hazard of their Lives and Fortunes, under the Direction of the Lord Provoſt. This was ſigned by all preſent, and by a hundred before Twelve next Day. They appointed ſome of their Number to preſent this to the Lord Provoſt, to deſire they might be allowed to chuſe their Officers, and that he would apply to General *Gueſt* for Arms to them: They were likeways ordered to intreat that the Parapet of the Town-Wall might be cleared, which, in many Places, had been ſtopt up with Stone and Lime to prevent ſmuggling; that Stairs ſhould be made for getting up to it at proper Diſtances; that Cannon ſhould be got from the Ships to be placed on the Flanks and Gates.' *Thurſday, Sept. 5th.*

This Spirit for putting the Town in a Poſture of Defence was ſo generally prevalent amongſt the well affected, and even the leaſt warlike Part of the Inhabitants, that, of this Date, a Repreſentation to the Lord Provoſt, Magiſtrates and Council, was ſigned by the Principal and Profeſſor of Divinity, and twelve more of the Miniſters of the City of *Edinburgh*, of whom the total Number is ſixteen, ſo that three only were abſent or wanting; which Repreſentation ſets forth, that they have ſeen and conſidered a Petition to their Lordſhip and Honours, ſubſcribed by a conſiderable Number of the Inhabitants of this City, well

well affected to his Majeſty's Perſon and Government, praying, that the City may be put in a proper Poſture of Defence againſt the common Enemy; that they the Miniſters of *Edinburgh* judged it their Duty to teſtify their hearty Approbation of ſuch Deſign, and their firm Reſolution to promote the ſame in their Sphere and Station, and thereby engage chearfully to contribute for defraying the neceſſary Expence with their Fellow-Citizens.

The Miniſters were as good as their Word as to this Article; for, out of their moderate Stipends, they joined in ſubſcribing for the Pay of one hundred Men out of the thouſand propoſed to be raiſed.

The Lord Provoſt however found alſo conſiderable Difficulties as to the Legality of this Meaſure, which was preſſed upon him, of raiſing the *Volunteers*, and did not give Way to it until he had firſt one ſigned Opinion of his Majeſty's Advocate and Sollicitor, 'That it was lawful for the 'Magiſtrates to authorize the Subſcribers, and o-'ther well affected Inhabitants, to take up Arms 'in Defence of the City and Support of the Go-'vernment.' And the Provoſt, it ſeems, not being fully ſatisfied with this Opinion, there was ſubjoined to it, and ſigned by the ſame Gentlemen, a far-

Eodem die, Sept. 6th. ther Opinion, 'That it was lawful, and 'not treaſonable, for the Magiſtrates to 'comply with the Deſire of the ſaid Petition of 'the Volunteers.'

Mr. MacLaurin's Journal. The Lord Provoſt declared now, and always afterwards, 'That he 'would inſiſt on the Privileges of his Office, and

'did

'did not leave the Nomination of the Officers to 'the Volunteers, but allowed them to make up a 'Liſt of 30 or 40, or more, from which he would 'chuſe them. He walked with ſome of the Ma-'giſtrates and Volunteers about a Part of the 'Town-Wall; he then ſaid, he could not ſee but 'if two thouſand Men had a Mind to get into 'the Town, they muſt ſucceed; after looking at a 'Part of the Wall, he deſired Mr. *MacLaurin*, 'one of the Volunteers, to take the Trouble to 'make a Plan of it, which he promiſed to do.

'It was thought proper to draw up an Article of 'News concerning this Aſſociation, to encourage 'others to join, and rouze the lethargick Spirit 'of the Country: After it was written, it was 'thought decent and dutiful to ſhew it to the 'Provoſt; the Words, *that this Propoſal was ac-'cepted by the Lord Provoſt*, were altered by him; 'he would have it, *that the Lord Provoſt acquieſ-'ced in this Propoſal.* This Alteration was much 'regretted by thoſe who were ſincerely zealous in 'this Cauſe, being ſenſible, that, in ſo critical a 'Time, more than *acquieſcing* was requiſite in the 'Magiſtrates, to animate the Burghers, and fore-'ſeeing, as it happened, that the *Trades* would not 'be *warm* when the Magiſtrates were ſo *cool*. 'The Volunteers however ſoon roſe to 400. The '*Expences* of the *Works propoſed* were much talk-'ed and complained of, at this Time and after-'wards.'

The Lord Provoſt moved in Coun- *Saturday, Sept. 7th.*
cil, that an Addreſs ſhould be drawn up and preſented to his Majeſty, which was unanimouſly agreed to; and accordingly a very dutiful

Addreſs

Addreſs was made out and ſigned; and that ſame Day it was reſolved in Council to authorize the Magiſtrates and Conveener to employ Perſons, with all poſſible Speed, to *put the City in a Poſture of Defence*, and particularly the *Walls thereof*.

Eodem die. Sept. 7th. Mr. Mac-Laurin's Journal.

'The Plan of the Wall was made 'ready, and preſented to the Council at 'Six o' Clock; the weak Places were 'pointed out, and what was moſt ne-'ceſſary to be done propoſed. The 'Lord Provoſt deſired an Eſtimate might be made 'of the Expence; but it was anſwered, that it 'could not eaſily be done, and would require 'Time. It was propoſed the Flanks ſhould be 'firſt taken Care of, as the Time which the Re-'bels would take to come to *Edinburgh* was un-'certain; that the doing as much as we could 'did not hinder the capitulating, if neceſſary; that 'there was a double Chance for Relief, either 'from Sir *John Cope* or the *Dutch*, ſo that holding 'out one Day, or two might ſave the Town; 'but that Diſpatch was neceſſary above all Things, 'and all the Workmen that could be got ought 'to be employed.

Sunday, Sept. 8th. Mr. Mac-Laurin's Journal.

'The Workmen cleared a Part of 'the Parapet, but the Number was ve-'ry ſmall for this Day, and indeed for 'the whole Week, till *September* 15th. 'Of this Complaints were made every 'Night, but to little or no Purpoſe; ſometimes 'there were only two Dozen, when there ought 'to have been as many Hundreds; for now the 'Rebels were at *Perth*. It was found that the 'Parapet, when cleared, was too narrow in ſeve-

'ral

'ral Places, and that it was neceſſary to add to 'it by Scaffolding. This was done in ſome Pla- 'ces, but ſo few Men were employed, that in o- 'thers it was not executed.'

The Lord Provoſt produced in Coun- cil a Sign-Manual from his Majeſty, addreſſed to the Lord Provoſt, Magi- ſtrates and Town-Council of *Edinburgh*, reciting, 'That it had been repreſented to his Ma- 'jeſty, that the Lord Provoſt, Magiſtrates, Town- 'Council, Burgeſſes, and others of the City of *E- 'dinburgh*, from their great Loyalty and Affecti- 'on to his Perſon and Government, were at this 'Juncture willing and ready to raiſe and maintain, 'at their own proper Charge and Expence, by 'voluntary Subſcription and Contribution, one 'thouſand Foot, for the Defence of the ſaid City 'and the Support of his Government, and that 'they were deſirous of obtaining his royal Li- 'cence and Authority for the ſame: His Majeſty 'does grant the ſame accordingly; and does far- 'ther ordain and command, that the ſaid one 'thouſand Men ſhall be under the Direction of 'the Lord Provoſt, Magiſtrates and Town-Coun- 'cil of *Edinburgh*.' *Monday, Sept. 9th, Council Record.*

This Warrant having been read and conſidered by the Magiſtrates and Council, 'They appointed, 'as a Committee, the preſent and old Magiſtrates, 'Conveener, Deacons *Lauder* and *Porteous*, or 'any five of them, the Lord Provoſt being always 'one, and, in caſe of his Abſence, any Nine of 'them to be a *Quorum*, to conſider what is moſt 'proper to be done upon this Occaſion, for levy- 'ing the ſaid 1000 Foot; and particularly to take

'in the Subſcriptions of ſuch of the Inhabitants as 'are willing to contribute for levying and main-'taining the ſaid 1000 Foot, with their proper Of-'ficers to be named, for the Purpoſes mentioned 'in the ſaid Sign-Manual, for the Space of three 'Months after they ſhall be ſo inliſted; as alſo to 'conſider what is proper to be done farther for the 'Safety of the City, and for Support of the Go-'vernment; which Committee ſhall meet at the 'Goldſmiths Hall twice each Day, at the Hours of 'Eleven in the Forenoon, and Four in the Af-'ternoon; and recommended to the ſaid Com-'mittee to keep a Book, into which all their Pro-'ceedings and Actings ſhall be regularly ingroſ-'ſed, to the End the ſame may be reported to the 'Council from Time to Time.

'And the Magiſtrates and Council nominate 'and appoint the Lord Provoſt to be Colonel 'and Commander of the ſaid 1000 Foot, with 'Power to his Lordſhip to conduct and direct 'them, and the other Officers who ſhall be named 'to command under him, as the Council ſhall 'think proper, or as the Exigencies of Matters 'ſhall require.

Eodem die. 'The Work went on but ſlowly;
Sept. 9th. 'ſome of the Embrazures in the Flanks
Mr. Mac-Laurin's Journal. 'for the Cannon, and in the Curtain 'for the Muſqueteers, were opened.'

Eodem die. A Letter was delivered to the Lord Provoſt, ſigned by three old Provoſts, *Drummond*, *Mac Aulay*, *Osburn*, and three old Bailies, *Nimmo*, *Blackwood*, *Wilſon*, on Behalf of themſelves and the other Volunteers, praying his Lordſhip to apply to the Commander in chief for 200 Stand of 'Arms;

Arms; and that he would appoint a Place where the Volunteers might be inſtructed in the Uſe of the Firelock and Bayonet.

'The Council appointed *Allan Burns*, late of the Lord *Rothes*'s Regiment, to be Adjutant to the 1000 Foot commanded by the Lord Provoſt, which were now levying, and recommended to his Lordſhip to find out proper Perſons to be Officers, to command each hundred Men under his Lordſhip. *Sept.* 10*th. Council Record.*

'A Scheme of what was moſt neceſſary to be done was drawn up by a Volunteer above mentioned, and ſhewn to General *Gueſt*, and at his Deſire to an old Officer of the Dragoons; being approved by him, it was preſented to the Lord Provoſt. It was inſiſted, that a high Houſe, which rakes a Part of the Wall near the *Potter-Row* Port, ſhould be poſſeſſed by a Party, and a Communication made from the Wall to the Houſe, to relieve or bring off the Men as Occaſion might require; but this, ſo much inſiſted on, was not yielded till *September* 16th, when Captain *Murray* approved of it; and then, though it was begun, there was not Time to finiſh it. *Eodem die. Mr. Mac-Laurin's Journal.*

'Unhappily at this Time the Elections of their Deacons ſo much employed the Trades, that few came to work on the Wall; and it never appeared, that, after repeated Complaints, proper Authority was employed to oblige them to work in this Time of the greateſt Danger.'

The Lord Provoſt reported, That he had procured from General *Gueſt* an Order to *David Lyon*, Store-Keeper of the Caſtle, to deliver to his Lord-

Lordſhip, or his Order, upon Receipt, two hundred Muskets, Bayonets and Cartouch-Boxes, and the like Number of Flints, with one Barrel of Powder, and an equal Proportion of Ball, which are to be diſtributed among the Gentlemen Volunteers.

The Council alſo authorized the Bailies of *Potter-Row* and *Portsburgh* to give Receipts for ſixty Stand of Arms, to be by them diſtributed amongſt the Inhabitants on proper Receipts.

The Council appointed the reſpective Deacons to make Choice of ſix Perſons out of each of their Incorporations, to be given in to the Council on *Friday* next, that, out of the ſame Liſts of ſix, three may be choſen by the Council, to the Effect the Corporations may elect their ſeveral Deacons for the Year enſuing.

Eodem die. Sept. 11*th.* The Committee above mentioned, appointed by the Council on the 9th, met for the firſt Time, the Lord Provoſt preſent, when they gave their Opinion concerning ſome Things to be done for the Reparation of the Walls, that the ſame ſhould be forthwith executed ſo far as hitherto undone.

Eodem die. Mr. MacLaurin's Journal. 'Some Cannon were got from 'Ships; and it having been earneſtly recommended to the Lord Pro-'voſt, that ſome Hand-Granadoes ſhould be got, 'and the City-Guard and Volunteers taught to 'uſe them, a Meſſage was ſent to the General, 'and by him to the Caſtle; but it was anſwered, 'That they had not above 200, and could not ſpare 'them. Afterwards, however, one of the Vo-'lunteers, ſurpriſed that there ſhould be ſo few 'in ſuch a Garriſon, ſo well provided with Stores, 'made

' made a Viſit to the Caſtle, and was told by the ' Store-Keeper, that he had five Times that Num- ' ber, and was deſired to tell the Provoſt, that he ' had a hundred at his Service, if he had a Mind ' for them. The Meſſage was delivered, but the ' Granadoes never appeared. We found twenty ' three that had lien in a Cheſt ſince 1715. in the ' Town's Armoury, but they were never exa- ' mined.

' A Ditch that had been ordered at *Wallace*'s ' Tower, had been carried on right for ſome ' Time, but was afterwards, by ſome Miſtake, or ' bad Advice, caſt on the wrong Side of the ' Dyke. This Day this was ſtopt, and a Reme- ' dy propoſed, but not executed for Want of ' Time.

' The Committee above named *September* 12. ' came to ſome farther Reſolutions *A. M.* ' about fortifying the City-Walls, and, *inter alia*, ' recommended to Mr. *Mac Laurin* to go along ' with the Tradeſmen to explain the tenth Article ' of his Memorial, in relation to the putting the ' Wall at *Leith-Wynd* in a better Poſture of De- ' fence.'

In Purſuance of the Lord Pro- *Committee's* voſt's Recommendation, the Com- *Record.* mittee reſolved that it be recommended to ſome of the City-Guard, *Edinburgh* Regiment, and Gentlemen Volunteers, that they do learn the Exerciſe of throwing the Hand-Granadoes.

' The Committee reſolve, That *Eodem die.* ' the Council ſhould invite thoſe *P. M.* ' who have any Quantities of Grain at *Leith*, or ' other Parts near to the Town, to bring the ' ſame

'ſame into this City, to be lodged in the City's 'Granaries, to be kept therein from the Enemy, 'Rent-free.'

September 13. Council Record. 'The Provoſt reported, That, on 'the 12th current, he had given 'Receipt to the Store-Keeper of the 'Caſtle for a hundred Muskets, Bayonets, and 'Cartouch-Boxes, with Half a Barrel of Powder, 'and Ball in Proportion, for the Uſe of the Vo-'lunteers of this City; and alſo that he had given 'Receipt for 200 Stand of more Arms to the 'Uſe of the City's Regiment.'

'The Proceedings of the Committee for levy-'ing the City-Regiment, and forewarding the ne-'ceſſary Steps to be taken for the Safety and De-'fence of the Place, named the 9th current, were 'read over, and unanimouſly approved by the 'Council, which recommended to the Commit-'tee to continue in their Diligence.'

The Council then proceeded to make the ſhort Leets for the Election of new Deacons, after which there is nothing entred in the Council-Record, till the 18th of *September*, the Day after the Rebels got Poſſeſſion of the Town, when there were ſome Proceedings relating to the annual Election, which did not take Effect.

Eodem die. Minutes of the Committee. 'The Lord Provoſt, and other 'Members of the Commitee preſent, 'recommended to Bailie *Robert Bail-'lie*, and his Committee upon the publick Works, 'and ſuch of this Committee as pleaſed to attend, 'or any three of them, Bailie *Baillie* being al-'ways one, to ſee the whole Particulars contain-'ed in the former Minutes fully executed, with-

'out

'out Loſs of Time, and to take the Advice and 'Direction of ſuch proper Perſons without Doors, 'as they ſhall judge neceſſary for executing the 'whole Particulars; with Power to the ſaid Com-'mittee to preſs ſuch Workmen as ſhall be judged 'proper for compleating the whole Works before 'ſpecified.'

'The Day of the Election of the 'Deacons there was very little done 'on the Wall; the Deacons could 'not be got; ſome Houſes in *St. Mary's Wynd*, 'that had large Windows into the Town, were 'ſhewn to ſome Magiſtrates, and afterwards to 'the Provoſt; but no Orders were given about 'them. This Day the Carriages of the Cannon 'were examined, and any neceſſary Reparation 'ordered.' *September 13. Mr. MacLaurin's Journal.*

'The Lord Provoſt in the Com-'mittee reported, That he had this 'Day ſigned an Order for Payment 'of 1000 *L. Sterling* to the Receiv-'er-General, to account of the Ceſs due by the 'City.' *Saturday, September 14th. Committee Record.*

'The Committee reſolve, that the Ceſs-Books, 'and thoſe by which the Annuity and Poor's 'Money is collected, ſhall be tranſported from 'the ſeveral Collector's Offices to the Caſtle of '*Edinburgh* for Preſervation, and the Provoſt 'wrote a Letter to General *Preſton*, the Gover-'nor of the Caſtle, praying him to receive the 'ſaid Books, and keep them for the Uſe of the 'City.'

This is the laſt Entry made in the Regiſter of the Proceedings of this Committee, which does not

not appear to have met again after this *Saturday* the 14th.

Eodem die. *Mr. MacLaurin's Journal.*

'Little Work on the Walls and 'Scaffoldings, the Cannon were all 'proved and the Shot got ready.

September 15. *dit. Journal.*

'The Lord Provoſt brought Captain *Murray* to Town to give his 'Advice, and, not till this Day, he ordered ſome 'Works within the Gates, which were begun 'immediately. There were more Men employed this Day than ever before; and every Body 'ſeemed to exert themſelves: But the Lord Provoſt having never named the Field-Officers to 'the Volunteers, they were now nine independent 'Companies: And, upon a Motion to go out 'with Colonel *Gardner*, they unhappily divided 'in Opinion, which produced ſome Heat amongſt 'them. A moſt unlucky Signal was pitched on 'to call them to their Arms, the ringing of the 'Fire-Bell, which never fails to raiſe a Pannick 'in *Edinburgh*. This happened in Time of Divine Service; the Churches diſmiſſed in Confuſion and Terror: And this was the firſt Appearance of Fear in the Place: This Signal 'ought not to have been propoſed or allowed by 'the Magiſtrates at ſuch a Time, the Rebels not 'being far from us.'

'This Day moſt of the Cannon were carried 'to the Flanks, and in this as much Regard as 'poſſible was had to the weakeſt Places; ſo that 'there were three on St. *Mary's* Wynd, which 'raked it. About Six, one of the Volunteers, 'with the Chief of the Bombardiers, came to the 'Provoſt, to have an Order to load them; he

'kept

'kept them waiting till eight, and then desired 'another to sign the Order for him. They be- 'gun, though in the Night, but, after they came 'to the *Bristo* Port, they were obliged to wait 'from Half an Hour after Ten, till near One, 'for Want of a Centinel to place on the loaded 'Gun, though they sent Messages for Centinels 'to the Guard and Council. This put a Stop 'to their Progress that Night; the Guns were all 'loaded with small Shot, and, as they flanked 'the Curtains and Gates, it was the more dan- 'gerous to leave them without Centinels during 'all that Time, while the rest of the Wall was 'guarded, and, *All is well*, was heard go round 'regularly; there were no Centinels from *Bristo* 'Port to the *West* Port, but one or two below.

On the Evening of this 15th of *September*, when the Rebels were within a few Miles of the City, and it was apprehended that they might have come up to it during that Night, it was resolved, at a Meeting with the Lord Provost and others of the Council, with the Captains of the Volunteers, that 700 Men should be upon Duty all Night, to guard the Walls all round the Town, who were to consist of 400 Trained-Bands, 40 of the new Regiment, 100 Volunteers, 90 Seceders, 40 *Dalkeith* Volunteers, 30 Excise Officers.

'The Works went on chearful- *Monday, September 16. Mr. MacLaurin's Journal.*
'ly till Four or Five at Night; a 'Work was thrown up to defend 'the Pass to *Mountrefay*, some Gates 'were shut up, some more Cannon were got, 'and carried to the Bastions and Gates; we were 'told that only five Gunners were got at One

o' Clock, but were promiſed that Pains ſhould be taken to get more.

Betwixt Two and Three o' Clock, ſome Burghers were ſaid to be carrying about for Subſcriptions a Petition to the Magiſtrates, praying the Town ſhould capitulate. The Alarm being great at the *Weſt Port*, the Guns there were loaded, and the other Works preſſed on, ſo that they were almoſt finiſhed, when an Account came, that a Meeting in the *New Church* had agreed to capitulate. One of the Volunteers called for the Provoſt, to know what was to be done to the Cannon; but was told, that his Lordſhip had not Time to ſpeak to him. The Call of, *All is well*, did not go round the Wall this Night as the former, and the Town ſeemed to be quite off its Defence; the Volunteers delivered their Arms into the Caſtle.

Here Mr. *MacLaurin*'s Journal ends, which is all in his own Hand-Writing; and, as he was himſelf a Volunteer, and ſerved the Town as a chief Engineer, to deviſe and direct the Methods of fortifying the ſame; as he was a Perſon of great and eminent Abilities, of excellent Judgment as well as great Learning, and of perfect Probity and Veracity; as he had Opportunity to know all the Facts which he relates, and which he ſet down in Writing recently after they happened, with great Diſtinctneſs and Preciſion; and as the Purſuer has Reaſon to believe that his Relation will be confirmed by the Teſtimony of living Witneſſes, he has choſen, in this Deduction of the Facts, in order to make the Charge and the Defence better underſtood, to make Uſe of the very Words

of

of Profeſſor *MacLaurin*, as the moſt accurate and genuine Relation of the Facts that could be made, ſo far as he goes.

The Events of *Monday* the 16th, when, after ſo much Preparation for a Defence, the City of *Edinburgh* was in Effect ſurrendred, and opened its Gates to the Rebels, were various, and deſerve to be more minutely recited. In the Morning of that Day Provoſt *Stewart* received a Meſſage from the Camp of the Rebels, which was delivered to him by *Andrew Alves* Writer to the Signet, importing, That the City of *Edinburgh* would be ill-treated by them, unleſs it ſhould be readily or ſpeedily ſurrendred. Upon receiving which, the Provoſt did not commit the ſaid *Andrew Alves* to Priſon, neither did he give Notice of this Incident to any other of the King's Officers, Civil or Military, nor did he ſo much as adviſe or charge Mr. *Alves* to forbear repeating or relating that Meſſage of his in the Town, who went directly from the Provoſt to the Street, and repeated his Story to a Circle of People who came round him, amongſt whom one Gentleman adviſed Mr. *Alves* to go and tell what he had been relating to his Majeſty's Advocate; upon his doing which, the Advocate adviſed the Lord Provoſt to commit Mr. *Alves* to Priſon, which was now done too late to prevent the diſcloſing or ſpreading the threatning Meſſage which he had brought.

About Two o' Clock in the Afternoon of that Day, a Petition was ſet on Foot, which was put into the Lord Provoſt's Hands about Three, addreſſed to the Lord Provoſt, Magiſtrates and Council, and intitled, *Repreſentation of the under-*

ſubſcribing

nion, that the Town ſhould be defended, and that therefore he muſt anſwer for the Conſequences of this unneceſſary Delay; and as for the Lord Advocate's Opinion, that had already been given in Writing an Hour or two before, when he, along with the Lord Provoſt himſelf, had ſigned a Letter to General *Gueſt*, requeſting 100 Dragoons to aſſiſt in defending the City.

About Four o'Clock in the Afternoon, that is, about an Hour after the Petition above recited was preſented to the Lord Provoſt, praying for a general Meeting of the Inhabitants, to conſult or deliberate with the Magiſtrates and Council, whether to defend or give up the Town, ſuch Meeting was accordingly held in the *New Church Iſle*, the Lord Provoſt being in the Chair and preſiding.

At this Meeting there happened to be preſent ſome of the Reverend Miniſters of the City of *Edinburgh*, and ſome other Perſons of known good Affection to his Majeſty and his Government, according to whoſe Obſervation, the far greater Part of the Perſons there aſſembled were reputed of a quite contrary Character; and indeed it was impracticable, at this Meeting, to gather the true Senſe of the Citizens in general, ſuppoſing it had been now ſeaſonable or fit to deliberate in a popular Aſſembly, whether to give up or purſue the Defence of the City, for which hitherto ſo many Preparations had been making, becauſe the greater Part of the moſt ſubſtantial and well affected Burgeſſes, who were in Arms as *Volunteers*, had no Notice of this Meeting, or the Intent of it, and could not poſſibly attend it, being at that very

Time

Time under Arms with their reſpective Officers, waiting for Orders from the Lord Provoſt or Colonel, in what Manner they ſhould be diſpoſed of, or act for the Defence of the City.

At the Meeting thus aſſembled, and thus compoſed, the general Cry was for giving up the City without making any Defence; and the Reverend Mr. *Logan* Miniſter, and others, who attempted to ſpeak in Oppoſition to this Meaſure, were born down with Clamour and Noiſe.

During this Meeting Mr. *Lindſay*, Deputy Secretary of War, came with a Meſſage from General *Guiſt* to the Lord Provoſt, upon the General's hearing the Rumour that there was a Meeting of the Inhabitants to deliberate about giving up the Town to the Rebels, to ask the Provoſt if he continued to be of Opinion that the Dragoons ſhould come into the Town. To which the Provoſt anſwered, that he would neither bid nor forbid them, but that the General might do what he thought proper. Upon which Mr. *Lindſay* very naturally aſked him, how he came to ſcruple about giving Directions concerning the Dragoons, when he had an Hour or two before ſent a written Requeſt to the General to obtain them. To which the Provoſt anſwered, that he had only ſigned that Requeſt at the Deſire of the Lord Advocate.

Towards the Cloſe of this general Meeting, there was brought into it, in a Manner that appeared ſomewhat myſterious, being handed in from the Door, from one Perſon to another, in the Crowd, a Letter addreſſed, For the Lord Provoſt, Magiſtrates, and Town-Council of *Edinburgh*, ſigned

Charles

Charles P. R. bearing Date, *From our Camp, this 16th* September 1745. and in the following Words,

'Being now in a Condition to make our Way 'into the Capital of his Majeſty's ancient King- 'dom of *Scotland*, we hereby ſummon you to re- 'ceive us, as you are in Duty bound to do; and, 'in order to it, we hereby require you, upon Re- 'ceipt of this, to ſummon the Town-Council, 'and take proper Meaſures in it for ſecuring the 'Peace and Quiet of the City, which we are ve- 'ry deſirous to protect: But if you ſuffer any of 'the Uſurper's Troops to enter the Town, or a- 'ny of the Cannon, Arms, or Ammunition now 'in it, whether belonging to the Publick, or to 'private Perſons, to be carried off, we ſhall take 'it as a Breach of your Duty, and a heinous Of- 'fence againſt the King and Us, and ſhall reſent 'it accordingly. We promiſe to preſerve all the 'Rights and Liberties of the City, and the parti- 'cular Property of every one of his Majeſty's 'Subjects: But if any Oppoſition be made to us, 'we cannot anſwer for the Conſequences, being 'firmly reſolved at any Rate to enter the City; 'and, in that Caſe, if any of the Inhabitants are 'found in Arms againſt us, they muſt not expect 'to be treated as Priſoners of War.'

This Letter was not read out in the general Meeting in the Church; for, as ſoon as the Subſcription to the ſame was read, the Meeting broke up, and the Lord Provoſt, with the Members of Council there preſent, returned to their Council-Chamber, where this Letter was again produced and read; after which it was moved, or agreed to by the Provoſt, that an Anſwer ſhould be ſent to it,

which

which was accordingly ſent, firſt by one, and then by another Deputation from the Council, who went out to the Camp of the Pretender's Son, who was then about two Miles to the South-Weſt of the City, upon the Water of *Leith*, in the Pariſh of *Collington*. The Return, brought in Writing, to the firſt of theſe Deputations, was in the Words following. 'His R. H. the Prince Regent, 'thinks his *Manifeſto*, and the King his Father's 'Declaration, already publiſhed, are a ſufficient 'Capitulation for all his Majeſty's Subjects to ac-'cept of with Joy. His preſent Demands are, to 'be received into the City as the Son and Re-'preſentative of the King his Father, and obey-'ed as ſuch when he is there. His R. H. ſup-'poſes, that ſince the Receipt of his Letter to the 'Provoſt, no Arms or Ammunition have been 'ſuffered to be carried off or concealed, and will 'expect a particular Account of all Things of that 'Nature. *Laſtly*, He expects a poſitive Anſwer 'to this before Two o'Clock in the Morning, o-'therways he will think himſelf obliged to take 'Meaſures conform. At *Gray's Mill*, 16th *Septem-'ber* 1745. *By His Highneſs's Command*,

(ſigned) J. MURRAY.'

It is proper here to obſerve, that after the firſt Deputation was ſent out to the Camp of the Pretender's Son, Notice was brought to the Lord Provoſt, and the others aſſembled with him in the Council Chamber, that Sir *John Cope*, with the Troops under his Command, was arrived off *Dunbar*. This News was brought by Mr. *Walter Groſet*, who brought the original Letters from

Dunbar, giving Notice of this Event, together with a Letter from the Lord Advocate, who was then at *Muſſelburgh*, certifying that theſe were the original Letters. All theſe Mr. *Groſet* delivered to the Lord Provoſt in the Council Chamber; upon peruſing which the Provoſt ſaid, This News had come too late, for they had come to a Reſolution to capitulate, and had ſent a Deputation to the Camp of the Rebels for that Purpoſe, and ſhewed to Mr. *Groſet* the Letter above recited from the Pretender's Son, as the Occaſion of that Reſolution. Mr. *Groſet* then propoſed to ſend after the Deputies to bring them back, and for that Purpoſe another Member of the Council was accordingly ſent, but he did not overtake them.

About this Time Mr. *Drummond* and Mr. *Mac-Aulay*, Captains of the Volunteers, and who had been both formerly Provoſts of *Edinburgh*, (as the former now is) upon hearing of Sir *John Cope*'s Arrival, came to the Council-Houſe, and inſiſted that the Defence of the Town ſhould be now reſumed, as there was ſo near a Proſpect of their obtaining Relief, and propoſed the ringing of the Alarm-Bell, as a Signal to bring every Body back to their Poſts.

To this the Provoſt anſwered, That he muſt be careful of the Blood of the Inhabitants; and that, as certain of their Number had been ſent out as Deputies to treat, ſhould they be in the Hands of the Rebels whilſt the Alarm-Bell was rung, they the Deputies might be ill uſed by the Rebels; and alſo urged the former Objections, of the Difficulty and Danger of defending the Town. To this Mr. *Groſet* replied, That he knew the Situation

of

of the Town ſo well, and the Condition of thoſe who were to come againſt it, who had no Cannon and few Arms, that he would undertake to be one of Fifty that ſhould defend the weakeſt Place of it till the Troops ſhould come to their Relief. To which one of the Council aſſenting, the Lord Provoſt ſeemed to give Way to the Reſolution of defending the Town, provided General *Gueſt* would agree to let them have from the Caſtle what Arms ſhould be wanted. This Mr. *Groſet* undertook to procure, and went directly, accompanied by Provoſt *Couts* one of the Council, to General *Gueſt* in the Caſtle; who told him for Anſwer, That he was glad the Provoſt had come to a Reſolution to defend the Town, who might depend upon the utmoſt Aſſiſtance that he the General could give them; and that, as ſoon as the *City-Arms* ſhould be put into proper Hands for that Purpoſe, what *farther Arms* were wanting ſhould be ready to be delivered to them from the Caſtle.

Upon their Return to the Provoſt, and reporting the General's Anſwer, Mr. *Groſet* was told, 'That as the Perſon, who had been ſent to bring 'back the Deputies, had not overtaken them, the 'Provoſt and Council, as they had entred upon 'a Treaty, had come to a Reſolution not to de-'fend the Town.'

It was then propoſed and inſiſted on, that the Cannon and Arms ſhould be delivered into the Caſtle. For Anſwer to which the Provoſt referred to the Letter from the Pretender's Son, and obſerved the Danger which the Town would incur, if they ſhould remove their Arms. To which

Provoſt

Provoſt *Drummond* replied, That if they, by giving up the Town, aſſiſted the Rebels with Arms to fight againſt the King's Troops, would not they, upon retaking the Town, be apt to look upon the Inhabitants as Enemies, and uſe them accordingly?

After Receipt of the above Anſwer to the firſt Deputation, the Council agreed to ſend out a ſecond Deputation, in order, if poſſible, to gain ſome more Time. The Anſwer to which ſecond was alſo brought in Writing, though not ſigned, as the former was, and in the following Words: 'His Royal Highneſs has already given all the Aſ'ſurances he can, that he intends to exact no'thing of the City in general, nor of any in par'ticular, but what his Character of Regent inti'tles him to: This he repeats, and renews his 'Summons to the Magiſtrates to receive him as 'ſuch.'

This ſecond Deputation returned to *Edinburgh* early in the Morning of *Tueſday* the 17th of *September*, in a Hackney-Coach, which entred the City at the *Weſt* Port, and ſet down the Deputies at Mris. *Clark*'s Tavern, where the Lord Provoſt and others of the Council were waiting for them, to receive their Report, and then the Coach drove down the Street towards the *Canongate*; and at the *Netherbow* Port, which was then kept by a Serjeant's Command of the City-Guard, the Gate was opened to let out the Hackney-Coach, and a Body of Rebels, who were waiting without the Gate, headed by *Sullivan* and *Lochiel*, ruſhed in at the Gate, and became at once Maſters of this Capital.

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The Rebels, immediately after their becoming Maſters of the City, ſeized all the Cannon, Arms and Ammunition belonging to it; and the Day following, being *Wedneſday* the 18th, they iſſued a Proclamation, requiring all Perſons in the Shire of *Edinburgh*, forthwith to deliver up, at the Palace of *Holy-Rood-Houſe*, all the Arms and Ammunition they had in their Cuſtody, on Pain of being treated as Rebels. And, on *Thurſday* the 19th, they ſent a Meſſage in Writing to the City of *Edinburgh*, requiring, on Pain of military Execution, that 1000 Tents, 2000 Targets, 6000 Pairs of Shoes, and a proportional Number of Water Cantines, ſhould be furniſhed to their Army againſt the 23d, and promiſing Payment as ſoon as the preſent Troubles ſhould be over. All which were accordingly furniſhed, and for that Purpoſe a Tax laid upon the Inhabitants of 2 *s.* 6 *d.* upon each Pound of their real Rent, within the City, *Canongate*, and *Leith*.

Thus was the City of *Edinburgh*, which had, in their Addreſs to the King of the 7th of this very Month, ſaid, with great Truth, 'That this City 'hath always diſtinguiſhed itſelf by a firm and 'ſteddy Attachment to Revolution and Whig 'Principles, and a hearty Abhorrence of all Po-'piſh and arbitrary Government; and particu-'larly, that, during the Rebellion in the Year '1715. their Zeal for his late Majeſty was equal-'led by few, and ſurpaſſed by none; and, at the 'ſame Time, aſſured his preſent Majeſty, that, 'at this Time, they would ſtand by him with 'their Lives and Fortunes, and employ every 'Power they were poſſeſſed of, and all the Means

'his

'his Majeſty ſhould put in their Hands, to diſap-
'point the Attempts of *France* and the Preten-
'der.' This City, which had given ſo many Reaſons to expect better Things of it, was, after mighty Preparations for a vigorous Defence, thus poorly delivered up, without ſtriking one Blow, to an half-armed Rabble, at a Time when the King's Army was within a Day's March of the City, to the great Diſcredit and Reproach of the City itſelf, in the Eyes of the World, who were ignorant of the particular Circumſtances and Cauſes of ſo ſtrange an Appearance, to the hearty Grief and Sorrow of all its well-affected Inhabitants, who are by far the greater Part of them, to the Triumph of the Pretender's Son and his Adherents, to the Ruin of many unfortunate Perſons, who, by this Appearance of Succeſs, were encouraged to engage in the Rebellion, to the real and high Detriment, not of the City itſelf only, but of the Publick; the Rebels, by this Capture, having been there furniſhed with Arms, Tents, and Proviſions of all Kinds, which contributed chiefly to their obtaining the Victory at *Preſton-pans* a few Days after; and that again to the Continuance and farther Progreſs of the Rebellion, to the immenſe Addition to the Expence of the Publick, the great Interruption of Commerce and Credit, the Progreſs of his Majeſty's Enemies abroad, and the Interruption of the internal Tranquillity of this Kingdom, until that was happily reſtored by the Conduct and Succeſs of his Royal Highneſs the Duke.

It was natural for all the World, at firſt Sight, to lay the Blame of an Event, which has brought

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on and contributed to ſo many and great Miſchiefs, principally on the Lord Provoſt of *Edinburgh* for the Time, being the chief Magiſtrate and Governor of the City: And the Queſtion now brought to Trial is, Whether he was, or was not guilty or culpable in his Deportment in that high Office, during the Tranſactions libelled, and above more particularly recited? The Libel charges, That he *was guilty* of groſs *Neglect of Duty, and Misbehaviour* in his *Office on that Occaſion*; and whether he was or not muſt depend upon a due Compariſon of the Duty of his Office, with his actual Behaviour, to ſee how far the one comes up to the other, and wherein he was alledged to be deficient, and to have counteracted his Duty, the Libel fairly and particularly ſets forth, and thereby gave him the better Opportunity to clear himſelf, if he be able.

Upon the Libel being read in Court on the 13th current, and the Pannel being asked by the Court, as uſual, what he had to ſay for himſelf, he ſaid, in Effect, that he was not guilty, and that his Conduct, upon the Occaſion libelled, had been agreeable to his Duty, and then left it to his Council to offer and make good his Defence at large, of whom Five were accordingly heard at great Length, and the Subſtance of their Arguments, as far as the Purſuer could obſerve and recollect them, was as follows.

They took Notice that the Pannel had already ſuffered very great Hardſhips by his long Confinement, for the Space of fourteen Months, without being brought to Trial, which, to a Man engaged, as he is, in conſiderable Trade and Buſineſs,

they

they ſaid was a Puniſhment greater than he merited, ſuppoſing all that is alledged in this Libel were true. They ſaid that the Source of this hard Uſage was the Malice of certain Enemies of the Pannel in the City of *Edinburgh*, who, in order to ruin his Credit and Intereſt in this City, had ſet themſelves to find Fault with his Conduct during the Rebellion, had induſtriouſly miſrepreſented that Conduct, and raiſed a popular Clamour againſt him, which, having reached the Seat of Government, had produced the Severities he has already met with.

That he was however now glad of an Opportunity of having his Conduct brought to Trial by the certain Teſt of judicial Evidence, hoping that he would now be declared innocent upon Examination, who, by popular Clamour, had been pronounced guilty without Examination.

At the ſame Time it was alſo urged, tho' not very conſiſtently with this laſt Declaration, that the Pannel could not competently be brought to Trial at all in this Court upon this Libel; that the particular Statute of King *James* the II. upon which it is laid, was almoſt 300 Years old, and was gone into Deſuetude; that, whilſt it was in Force, it was never meant to concern any more than the Behaviour of Magiſtrates in their judicial Capacity, or ordinary Adminiſtration on ſuch Occaſions as commonly or yearly occur, but never to concern the extraordinary Office of Magiſtrates in Time of War or open Rebellion, when it may be very incident to them to err or commit Miſtakes, as many an honeſt Burgeſs may be very well qualified to diſcharge the Duty of Pro-

voſt,

voſt, or other Magiſtrate of his Burgh, in quiet and peaceable Times, from whom it cannot be expected, that, in ſuch an Exigency as an open Rebellion, he ſhould be able to act the Part of an expert military Commander or Governor of a Town, and that the Deportment of the Provoſt on ſuch Occaſion could not be tried at all at common Law; that it was an improper Queſtion to be tried by a Jury, who might very properly try a ſingle Iſſue, as whether a Man was guilty of Murder, Robbery, or the like, but very unfit to give Judgment upon a Series of Facts relating to the Deportment of a Provoſt, whether it was or was not agreeable to his Duty; and therefore it was ſaid, that the only competent Method, by the Conſtitution of this Kingdom, for trying and puniſhing Treſpaſſes ſuch as thoſe alledged in this Libel, was by the Authority of the Legiſlature itſelf, in ſuch Manner as had been practiſed in the Caſe of *Alexander Wilſon*, who had been Lord Provoſt of *Edinburgh* at the Time of the Murder of Captain *John Porteous*.

It was farther ſaid, by Way of more particular Anſwer to the Matters charged in this Libel, that the ſame contained nothing criminal; that, as to the *firſt* Article, concerning the raiſing of the *Edinburgh* Regiment, it was no Crime in the Provoſt to entertain a Doubt concerning the Legality thereof, and to heſitate to commit what he apprehended might have been treaſonable, and that he was juſtified in his Doubt by the ableſt Advice given for applying for his Majeſty's ſpecial Warrant, which was accordingly obtained.

That, as to the *ſecond*, concerning the Volunteers, he had the ſame Reaſon to doubt concerning the Legality of that Meaſure, and it was no Crime in him that he could not perceive any Difference betwixt authorizing a Body of armed Men who were to ſerve without Pay, and another Body who were to receive Pay, or that the one might be authorized without his Majeſty's ſpecial Warrant, which had been adviſed to be neceſſary or proper in reſpect of the other; that, more particularly, as to this Article, the Provoſt had Reaſon to take Offence, that the Meaſure was ſo far concerted and carried on by the Volunteers, as that they brought him a Petition, ſigned by ninety or a hundred Perſons, without his Privity, or previouſly conſulting with him: This he had Reaſon to conſider as a deſigned Neglect and Inſult upon him; and yet, as ſoon as he was adviſed that the Thing might be lawfully done, he gave Way to it; and it was a very ſlender Circumſtance to be charged as a Crime, that he choſe to have it ſaid that he *acquieſced* in that Meaſure, rather than that he *heartily approved* it, or that he ſhould be charged with a Defect of Civility or good Manners towards theſe Volunteers.

As to the *third*, concerning the Repairs of the City-Walls, it was obſerved in general, That the Provoſt was not the ſole Perſon anſwerable for any Slowneſs or Defect of Care and Diligence in this Reſpect, tho' he had been ſingled out, and made the ſole Object of this Proſecution. He was but one of many, who behoved to act by the Authority of his Council, and of the Committee appointed to take the ſpecial Direction of what concerned

cerned the Defence of the City; and that all his Conduct was agreeable to the Senſe of theſe two Bodies, and approved by them, and without them he could do nothing; for that the King's Warrant concerning the Regiment, being addreſſed to the Lord Provoſt, Magiſtrates and Council, and having ordered that the Regiment ſhould be under the Direction of them all, and the Council having appointed a Committee for that Purpoſe, and to conſider what farther ſhould be done for the Safety of the City, the Provoſt was thus limited in the legal Exerciſe of the known Duty of his Office; that, however, the Committee, whereof he was one, had given the neceſſary Orders for the Repairs, and Warrants for impreſſing Workmen for that Purpoſe; that the Cannon upon the Walls were actually loaded on *Sunday* the 15th, and Applications were made to procure Gunners for managing them.

To the *fourth* Article it was ſaid, That no Propoſition could be accepted or rejected by the Provoſt alone, but by the whole Council; that as to the Propoſition in the Article mentioned concerning the Trained-Bands, of the purging that Body of diſſaffected or ſuſpected Perſons, it was true that the Provoſt was averſe to it, and choſe rather to undergo any Hazard, than take upon him to fix ſuch Mark of Infamy upon a Number of his Fellow-Citizens, without any certain Ground of Charge againſt them.

To the *fifth* Article, That here again the Pannel was charged with Defect of Civility or good Manners, (a very unuſual Point of Dittay) and that ſuppoſing the Fact true, of the Converſation with

with Sir *Robert Dickſon*, it was not unreaſonable, nor could juſtly give Offence, for the Provoſt to propoſe ſuch Method for finding Subſiſtence to the ordinary Men, as inliſting them in the *Edinburgh* Regiment, which would alſo be a Mean to inſure their Attendance and Service for a limited Time, ſo as they might not be at Liberty to withdraw at Pleaſure, and this perhaps when the City ſhould be under the moſt preſſing Exigency.

To the *ſixth*, That the only Thing here imputed to the Pannel as an Offence, was his not immediately committing *Andrew Alves* to Priſon, the doing which might have been of bad Conſequence, to deter others from bringing Intelligence to the Provoſt concerning the Rebels or their Deſigns, and that at beſt it was not a very clear Caſe, that it was at all lawful or competent to commit Mr. *Alves* for only repeating to the Provoſt what the Rebels had ſaid to him, when they ſeized him and made him their Priſoner; that his receiving the Meſſage, or hearing what Mr. *Alves* ſaid, could be no Crime; and, as ſoon as he heard it, he repaired to the Council-Chamber, then held in the Goldſmiths Hall, where he imparted this Piece of Intelligence to ſome others of the Council, who agreed that it ſhould be concealed, leſt it ſhould intimidate the Inhabitants; that, however, ſoon after, the Lord Provoſt ſaw the Lord Advocate, and, in Purſuance of his Advice, actually committed Mr. *Alves*.

To the *ſeventh* and *eighth* Articles it was ſaid, That *Monday* the 16th of *September* 1745. was a Day of univerſal Diſtraction in the City of *Edinburgh*;

burgh; that the two Regiments of Dragoons of *Hamilton* and *Gardner*, who, with the whole City-Guard, had been poſted at the *Coltbridge*, a Mile Weſt from *Edinburgh*, about 3 Afternoon, retreated, and paſt, by the North Side of the Town, Eaſtward, which greatly heightned the Pannick of the Citizens, being thus abandoned by the only military Force they had in their Neighbourhood, and no News of Sir *John Cope* or his Army was now come, and at the ſame Time the chief Civil Officers of the Crown had left the City; and yet, in this Situation, the Lord Provoſt, in the Goldſmiths Hall, where many of the Council and other Inhabitants were aſſembled, declared himſelf ready to act his Part for the Defence of the Town; but that he was now ſeconded by few: But at this Juncture one Mr. *Groſet* arrived, and delivered a Meſſage to the Provoſt, that he ſhould ſend for, or conſent to receive a Party of Dragoons; at which he the Provoſt was ſurpriſed, having been preſent the Night before at a Council of War, where it was reſolved to be improper to bring any of the Dragoons into the City; upon which he gave his Anſwer in Writing to that Meſſage, which is above recited: That the Inhabitants, anxious to know the Reſolutions of the Council, preſſed into the Room in a Crowd, and then ſome Body elſe, not the Provoſt, propoſed adjourning to the New Church Iſle; that, on the Way thither, a Gentleman on Horſeback told loudly, that the Rebels were near 8000 ſtrong, which ſtill heightned the Pannick; that yet, in the New Church Iſle, the Lord Provoſt ſpoke as he had in the Council-Room, declaring himſelf ready, if the Citizens

Citizens were ſo diſpoſed, to do his Part for Defence of the City; that at this Meeting the Letter from the Pretender's Son was brought in, to the Reading of which he the Provoſt objected, and thereupon returned with his Council to the Goldſmiths Hall.

That the Inhabitants had now the Direction of Affairs in their Hands, and they were governed by their Fears and Terrors; that the higher Civil Officers of the Crown being gone, the Magiſtrates ſent to their own Aſſeſſors for Advice; but they alſo were all gone, excepting one, who declined giving any explicite Opinion on ſuch high Matters; upon which the Letter was read, and found to be to the ſame Purpoſe with *Alves*'s Meſſage, and then they thought themſelves under an unavoidable Neceſſity to ſend out a Deputation, in order to procure a Delay, and gain ſome Time for the expected Relief to come.

To the *ninth* and *tenth* it was ſaid, That the Defence of the Town was now given up as impracticable; and that, upon ſerious Deliberation, it was the unanimous Opinion of the Council, that no direct Order ſhould be given by the Lord Provoſt concerning the Arms of the Volunteers, or the Cannon upon the City-Walls, for Fear of incenſing the lawleſs Multitude of Rebels to put their Threats in Execution.

The ſame Anſwer was given to the *eleventh* Article, relating to the *City-Arms*, to which there was now added, and not till now, a Matter of Fact never formerly alledged by the Pannel, neither in his Examination before the Committee of the Privy-Council, on the 7th *December* 1745.

nor

nor in the ſigned Anſwers returned by him to his Libel, and it muſt appear very ſtrange, if it was true, that the moſt plauſible Anſwer he had to make to this very heavy Article ſhould never have been once mentioned till now, being, that he the Provoſt could prove that he ſent a Meſſage to General *Gueſt*, propoſing that he ſhould ſend a Party of Soldiers to take away the City-Arms and carry them up to the Caſtle.

Upon the *twelfth* Article it was ſaid, That the Opinion of the Citizens of *Edinburgh*, or any Number of them, concerning the Pannel, could afford no Evidence that he was actually guilty; and that, upon the whole, the Surrender of the City was owing to a Train of unavoidable Accidents, for which he the Provoſt was not blameable.

Notice was alſo taken more than once, by the Pannel's Council, that he himſelf had a very large Property, conſiſting of a Stock of Wines, lying in his Cellars at *Leith*, which would be expoſed to the Diſcretion of the Rebels in caſe of their coming to *Edinburgh*; but the Concluſion drawn from this Fact was not, to the Purſuer's Obſervation, diſtinctly ſpoke out or explained by his Council; ſo that the Purſuer is ſtill at a Loſs to know what Uſe was meant to be made of that Obſervation, whether by Way of Argument to evince the Sincerity of Mr. *Stewart*, in deſiring to keep the Rebels at a Diſtance, that his own moveable Eſtate, of ſo great Value, might not come under their Power; or if it was meant to be offered by Way of Excuſe for him, that he was afraid of giving Offence to the Rebels, by oppoſing them with Vigour and Zeal, becauſe they might have it in

their

their Power to hurt him deeply in his private Fortune or Effects; and therefore the Purſuer muſt leave it to them to explain their own Meaning or Intent, in alledging and inſiſting on this Matter of Fact.

It was farther obſerved for the Pannel, though not very conſiſtently with the Allegation, that there was nothing material relevant or criminal charged upon him in theſe Articles; that the Charge therein contained, if it amounted to any Crime at all, was no leſs than that of high Treaſon; for that ſuch, no doubt, it was, if he purſued Meaſures that had no other Tendency than to betray the City, whereof he was chief Magiſtrate, into the Hands of the Rebels: It would have been this Crime in caſe the Provoſt had acted with that ill Intention, which is the eſſential Requiſite to render the Actions of Men at all criminal or puniſhable; and if the Provoſt had no ſuch Intention, then, ſuppoſing he had committed ſeveral Errors in his Conduct, theſe were no more than Errors in Judgment, and ſuch Miſtakes in Matters prudential, in difficult and dangerous Times, when a Magiſtrate muſt act one Way or other, ought never to be imputed to him as a Crime; for though the Part he chuſes do not prove ſucceſsful, the oppoſite Conduct might have been no more ſo, and, in that Caſe, that very oppoſite Conduct might, with the ſame Facility, have been laid Hold of as the Ground of a Proſecution: For Example, if he had brought in the Dragoons into the City, and theſe afterwards had fallen into the Hands of the Rebels; or, ſuppoſe he had found Means to ſuppreſs the threatning

ning Letter from the Pretender's Son, and the Inhabitants had ſtood to their Defence, and yet the Town had been ſtormed, and the Rebels had then cut the Throats of the Inhabitants, ſuppoſing he had eſcaped the Maſſacre, it is eaſy to imagine what a heavy Charge might have been formed againſt him, as having been the Author or Cauſe of ſuch Calamities: And therefore, ſince his Conduct is not alledged to have been directly treaſonable, it proceeded at worſt from Miſtake, or Errors in Judgment, which is no Crime at all that is puniſhable by the Law in a free Country, ſuch as this is.

It was farther obſerved, that the Pannel was not ſo much as charged in the Libel with Diſaffection to his Majeſty's Government; and that however the Facts libelled might be apt to make ſome Impreſſion, in maintaining a Charge of that Sort, they could not be combined or laid together to an End or Purpoſe that was not directly libelled; that the Facts alledged in the Libel might indeed amount to a Proof of this Propoſition, that the Provoſt was in his Judgment averſe to the Meaſure of defending the City of *Edinburgh*, as a Thing that was impracticable, and therefore not eligible or prudent to be attempted; and it was contended, that this was not even an Error in Judgment, for that he was in the right in being of that Opinion, for that the City of *Edinburgh* is no ſtrong or fortified Place; and though it is ſurrounded by an old Wall, and a Lake upon one Side, and that the Rebels had no Artillery, it had been very practicable for them to have made their Way into the Town; they might have blown

up the Gates, or a Part of the Wall, with Gun-Powder, or have ſet Fire to the Houſes on the Weſt-Side of *St. Mary's Wynd*, that enter from without, and yet are a Part of and adjoining to the Town.

All this was, ſo far as the Purſuer could obſerve or recollect, the Subſtance of what was urged by the ſeveral Council for the Pannel in his Defence; and, in Reply to theſe Things, it was, and is now, on Behalf of his Majeſty, and for the publick Intereſt, obſerved as follows.

It is admitted for the Purſuer, that the Council for the Pannel have rightly obſerved, that the Facts charged upon him, if it had been charged that they were done *doloſe & malo animo*, of *ſet Purpoſe* or *Deſign*, to have put the City of *Edinburgh* into the Hands of the Rebels, would have amounted to High Treaſon; for the Lord *Hale* ſays, in his *Pleas of the Crown*, Vol. I. Page 168. 'If a Captain, or other Officer that hath the 'Cuſtody of any of the King's Caſtles or Gar-'riſons, ſhall treacherouſly, by Combination with 'the King's Enemies, or by Bribery, or for Re-'ward, deliver them up, this is Adherence to the 'King's Enemies.'

And again, *p.* 169. he ſays, 'The Truth is, if 'it were delivered up by Bribery or Treachery, 'it might be Treaſon: But if delivered up upon 'Cowardice or Imprudence, without any Trea-'chery, though it were an Offence againſt the 'Laws of War, and the Party ſubject to a Sen-'tence of Death by Martial Law; yet it is not 'Treaſon by the Common Law, unleſs it was 'done by Treachery.'

And

And if the Pannel, without being engaged in the Intereſt of the Pretender, or without receiving any direct Bribe from him, or his Adherents, did even ſuffer himſelf to be moved by the Fear of their hurting his private Property in his Wine-Cellars at *Leith*, to neglect or counteract any Part of his Duty as Lord Provoſt of *Edinburgh*, this was at leaſt bordering extremely near upon High Treaſon.

The Atrocity and the Nature of High Treaſon is excellently deſcribed in the Digeſts of the Civil Law, in the Title *ad legem Juliam majeſtatis*, *l.* 11 in theſe Words, *Proximum ſacrilegio crimen eſt, quod majeſtatis dicitur, § 1. majeſtatis autem crimen illud eſt, quod adverſus populum Romanum, vel adverſus ſecuritatem ejus committitur, quo tenetur is, cujus operâ dolo malo, concilium initum erat, — quo armati homines cum telis lapidibuſve in urbe ſint, conveniantve adverſus rempublicam; locave occupentur, vel templa; quove cœtus conventuſve fiat, hominesve ad ſeditionem convocentur: — Quove quis contra rempublicam arma ferat: quique hoſtibus populi Romani nuncium literaſve miſerit, ſignumve dederit, feceritve dolo malo, quo hoſtes populi Romani concilio juventur adverſus Rempublicam.*

It is true, that, in this Deſcription, the *dolus malus*, or the ill Deſign, is an eſſential Ingredient; and it is in general true concerning all Crimes, as it is well expreſſed in the Reſcript of the Emperor *Hadrian*, *l.* 14. *ad legem Corneliam de ſiccariis, — in maleficiis voluntas ſpectatur, non exitus:* But the *voluntas*, or the *dolus malus*, is to be gathered from the Facts by the Judgment of the Court or the Jury, by whom the Party is tried, againſt whom the Facts

Facts are charged, which may very poſſibly have proceeded from a treaſonable Deſign againſt the Crown or the Publick.

The King, however, may, if he be ſo graciouſly pleaſed, wave the inſiſting againſt a Criminal for the higheſt Crime with which he may be poſſibly chargeable; ſo the Lord *Hale*, *p.* 374. 'All 'Treaſon is Miſpriſion of Treaſon and more; 'and therefore, he that is aſſiſting to a Treaſon, 'may be indicted of Miſpriſion of Treaſon, if 'the King pleaſe. *Stamf. P. C.* 37. 6. *Co. P. C.* '36. 2. *R.* 3. 10. 6.

'The Judgment in caſe of Miſpriſion of Trea'ſon, is Loſs of the Profits of his Lands during 'his Life, Forfeiture of Goods, and Impriſon'ment during Life.'

And the ſame Lord *Hale*, *p.* 143. reports 'a 'Caſe, where there was a Conſultation of the 'Judges, where he was preſent, in the Year 1675. 'relating to the Weavers in and about *London*, be'ing offended at the Engine-Looms for making of 'Ribbons, who roſe in great Numbers to deſtroy 'thoſe Engines in different Counties, and did Da'mage to the Value of ſeveral thouſand Pounds.

'Five of the Judges ſeemed to be of Opinion 'that this was Treaſon within the Act 25th, *Ed'ward* III. upon the Clauſe of levying War a'gainſt the King, or at leaſt upon the Clauſe of 'the Statute of the 13th *Charles* II. *Chap.* 1.

'The other five Judges were not ſatisfied that 'this was Treaſon within either of theſe Statutes.

'Many of them therefore concluded, that if 'Mr. Attorney ſhould think fit to proceed as for

'a

'a Treaſon, the Matter might be ſpecially found,
'and ſo left to farther Advice —

'Upon the Concluſion of this Debate, — Mr.
'Attorney, upon Conſideration of the whole Mat-
'ter, it ſeems, thought fit to proceed for a Riot,
'and cauſed many of them to be indicted for
'Riots, for which they were convicted, and had
'great Fines ſet upon them, and were committed
'in Execution, and adjudged to ſtand upon the
'Pillory.'

In the preſent Caſe, the Doubt is not concerning the Tendency of the Facts charged upon this Pannel, namely, That it was to give up the City of *Edinburgh*, the Capital of *North-Britain*, not to the King's Enemies only, but to a Pretender to his Crown; and the Doubt is only, *quo animo* this was done, whether with a treaſonable Intent, or through Cowardice, or Negligence, or Imprudence; and this might have been left to the Jury to judge, in caſe he had been charged with High Treaſon. It is therefore one ſignal Inſtance of the Mildneſs and Benignity of his Majeſty's Government, that the Purſuer has been ordered to proſecute this Pannel, 'not for High 'Treaſon, but for a high Miſdemeanour, in hav-'ing many Ways acted contrary to his Duty, 'and thereby ſuffered the City of *Edinburgh*, with 'the Cannon, Arms, Ammunition and Proviſi-'ons, to fall into the Hands of the Rebels;' and when the Pannel's own Council are ſenſible that the Facts charged upon him are ſuch, as, at leaſt, border ſo near upon High Treaſon, and might have been charged as ſuch, they cannot be permitted at the ſame Time to plead, or, at leaſt,

they

they ought not to be liſtned to when they plead, that the Facts here charged have no Relevancy in them, or do not amount to any Crime or Offence whatſoever.

The other Obſervations above recited were extremely groundleſs, That this Libel does not charge the Pannel with Diſaffection to the Government, and that the Opinion of the well affected Citizens, mentioned in the 12th Article, That he was ſecretly in the Intereſt of the Pretender, cannot infer his being actually guilty of any Crime whatever, for Diſaffection is not the Name of a Crime known in the Law; no Man can be tried for that Diſpoſition of his Mind, but for the Effects which it produces; and, if the Facts here charged had been alledged to have been done by the Pannel through Diſaffection to his Majeſty and his Government, that would have been in Reality, or in Effect, a Charge of High Treaſon, which was not the Thing intended in the preſent Caſe.

And as for the other Remark, it was far from the Meaning of the Purſuer to alledge, that any Man can be puniſhed merely for the Opinion of others concerning him: But that Fact is mentioned in the Libel for this Reaſon, That, when the main Queſtion, moved by this Trial, is, Whether the Pannel was, or was not culpable or negligent in the Execution of his Office as Lord Provoſt of *Edinburgh*, during the Rebellion, it is a Fact or Circumſtance ſtrongly tending to evince that he was ſo guilty, if it be true that the whole Tenor of his Behaviour was ſuch, as to induce a general Suſpicion or Belief amongſt the well affected

ed Inhabitants, that their Provoſt was ſecretly in the Intereſt of the Pretender; for, whether they were or were not in the Right in that Suſpicion or Belief, they, being ſo immediately and ſo deeply intereſted, could not fail to be conſtantly attentive to the Conduct of their Provoſt; and, if that was ſuch as produced in them ſuch Apprehenſion or Belief, that very Thing is one Demonſtration, ſuppoſing that they carried their Concluſion too far, that his Conduct was not ſuch as became a faithful, vigilant, and zealous Magiſtrate upon that Occaſion.

The Nature of the Office of Lord Provoſt of the City of *Edinburgh* is well known to this Court; It is partly the ſame that belongs to the chief Magiſtrate of every Royal Burgh in the Kingdom, and partly ariſes from the particular Grants to the City of *Edinburgh*; they are Sheriffs within themſelves; the Lord Provoſt is the High Sheriff, and, of late Years, as well as formerly, has acted as ſuch, and tried Cauſes even capital, and the Bailies are *ex officio* his Deputy-Sheriffs.

The Lord Provoſt is the King's Lieutenant within the City, he is Colonel of the City-Guard by the Act of Parliament authorizing that, and he is chief Commander of the City Trained Bands or Militia; and this very Provoſt claimed and was allowed to be the Colonel of the Volunteers, and was by the Council declared to be Colonel of the *Edinburgh* Regiment of 1000 Men, that was to be raiſed and paid by the voluntary Subſcriptions of the Inhabitants: In ſhort, the whole military Power within the City was in him, and the chief executive Power, in all Reſpects.

Neither

Neither is it true, that the Order in the King's Sign-Manual for the Regiment, that the ſame ſhould be under the Direction of the Lord Provoſt, Magiſtrates and Council of *Edinburgh*, was either intended, or had the Effect to derogate in the leaſt from the legal Powers and Privileges of the Lord Provoſt; that Warrant was granted on the Application of the whole Council of *Edinburgh*, the Regiment was to be maintained by them and their Fellow-Citizens, the End propoſed by it was the Defence of his Majeſty's Government, but more eſpecially the Preſervation of the City of *Edinburgh* againſt the Rebels; it was therefore very properly and graciouſly declared, that this Regiment ſhould be under the Direction of the Magiſtrates and Council of *Edinburgh*, that is, it ſhould not be withdrawn from the immediate Service of that City, or ſent elſewhere, like the reſt of his Majeſty's Troops, at the Diſcretion of his Generals, where it might be of Uſe for his Service, without the Conſent of the Magiſtrates and Council of *Edinburgh*. But this did not hinder the Lord Provoſt from being, according to the Conſtitution of the City, the Colonel or chief Commander of that Regiment, as well as of all the other military Force within the City. It cannot be ſuppoſed to have been the Senſe of his Majeſty's Order, that the whole Town-Council, conſiſting of thirty three Perſons, ſhould act the Part of a Colonel, or have the immediate Command of a Regiment, the utmoſt Effect that Order could have, was, that the whole Council ſhould have Power to give general Orders as to the Manner of employing the Regiment, ſuch as every

Prince

Prince or State are daily known to give to the Generals or Commanders of their Armies, who are not the leſs veſted with the Powers of Commanders, that they are ſubject to ſuch Direction or Controul.

Neither is it true, that the Appointment of a Committee, in the Terms above recited, was an Obſtruction or Hindrance to the Provoſt's acting in the Manner that the Libel requires of him, unleſs he can ſay, which he has not done, nor can do by any Thing that appears on Record, that either the *Council* or the *Committee* reſiſted his Will, or that they oppoſed or over-ruled him, by Majority of Voices, in any one Thing that he propoſed to be done towards the Preſervation of the City.

His Station therefore gave him *Power* ſufficient, and rendred it his *Duty* to be the chief Perſon to deviſe, order, and execute every Thing that was proper for preſerving his own City from the Rebels; and, if the Facts be true that are in this Libel charged, it is left to the Judgment of this Court, whether his *Conduct* was agreeable to his Duty, or if he was not, on the contrary, *faulty* or *negligent* in the Execution of his Office, and guilty of manifold *Misbehaviours* in it on the Occaſion libelled.

That Occaſion called for the moſt earneſt, vigilant, and active Diſcharge of the Duty of chief Magiſtrate, veſted with ſuch Powers as he had; and, to illuſtrate this, the Purſuer begs Leave to quote a Paſſage from a learned Author, *Ærodii rerum ab omni antiquitate judicatarum pandectæ*, in the Title, *de officio præfecti vigilum*, whereof the

Rubrick is in theſe Words: *Negligentiam, in iis qui ad ſummum reipublicæ pertinent, eſſe capitalem, cap. 1. M. Militius, Cn. Lolius, L. Sextilius, triumviri nocturni, cùm incendii arcendi cauſâ, quod Romæ in ſacra via exortum eſſet, cum hamis & dolabris, omnique familiâ publicâ evocati, tardiùs adveniſſent: à tribuno plebis die dictâ ad populum, damnati ſunt: leves ob cauſas, inquit Valerius; ſed diſciplina neceſſaria.*

Idem ferè apud nos, ſenatûs judicio, cùm adhuc illic eſſemus advocati, Gabaſtoni, præfecto vigilum, accidit: qui vocatus ad ſedandam ſcholarium de ſuo prato ſeditionem, non veniſſet. Nam indignum eſſe, qui, ut excubet reipublicæ ab omnibus aliis muneribus excuſatur, & præſens vice eſt abſentis: is in tanta neceſſitate, ubi minima mora ſummi momenti eſt, ſegnem, tardum ac negligentem ſe præbeat, aut (quod minùs quoque eſt ferendum) contumacem. — Et quando omnibus viribus opus eſt, nulla cauſa, nulla excuſatio proficit.

Cap. 2. P. Bilius quoque triumvir nocturnus, à P. Aquilio, tribuno plebis accuſatus, quòd vigilias negligentiùs circumiſſet, populi judicio concidit. Nam quod leviùs ſit in aliis cauſis, in his, ut in re militari, capitale eſſe. Quia puncto ſæpe temporis, maximarum rerum occaſiones amittuntur: neque in hujuſmodi bis errare fas eſt, aut dicere, Non putabam.

It was upon the ſame Principles that are here ſet forth, and followed in Practice in the *Roman* Republick, as well as the *French* Monarchy, that our old Statute 1457. in the Libel recited, was made, *for the Punition of negligent Officers*, and namely, *Provoſts of Burghs*, and others, who ſhould be found faulty and negligent in the Execution

'ecution of their Offices, and it may be lawfully 'proved on them, or notoriouſly known;' but with this Difference indeed, that every Offence of this Kind is not made capital, as *mitiores pœnæ mihi ſemper placuere*, but only that they be puniſhed, in their Perſons and Goods, after the 'Quantity of their Treſpaſs, at the King's Will.' This is ſuch a Statute as hardly enacts any Thing poſitive, or other than what is included in the common Law of this and all other civilized Nations, and therefore never can go into Deſuetude. And it ſeems unneceſſary to offer any Anſwer to the groundleſs Diſtinction advanced by the Pannel's Council, betwixt the Duty of a Provoſt, or other Magiſtrate, upon common or ordinary, and extraordinary Occaſions, there is neither Law nor Reaſon for that Diſtinction. No Man ſhould undertake the Office of a Pilot, who can only hold the Helm in his Hand in ſerene Weather, and is incapable to do his Duty when a Storm riſes. And the Allegation of this Diſtinction ill becomes the Pannel, who is a Gentleman by Birth and Education, and, as ſuch, ſuperior to the ordinary Rank of Burgeſſes, who may be, and often are raiſed to the Office of chief Magiſtrates.

Such, for Inſtance, was the Character of Provoſt *Wilſon*, a Brewer in *Edinburgh*, who was Lord Provoſt of that City when Captain *Porteous* was murdered, who, upon the ſame Principles that are above mentioned, was puniſhed by an Act of the 10th of his Majeſty, merely for being faulty or negligent in the Execution of his Office; for the Act recites the Murder of Captain *Porteous*, 'And that, for ſome Time before the com-

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'mitting the ſaid Murder and Riot, it was com-
'monly reported in the ſaid City of *Edinburgh*,
'that ſome ſuch atrocious Fact would be at-
'tempted, which, by proper Care in the Magi-
'ſtrates, Citizens and Inhabitants of the ſaid Ci-
'ty, might have been prevented; notwithſtand-
'ing which, *Alexander Wilſon*, Provoſt of the
'ſaid City, and then actually reſident therein,
'and fully appriſed of the ſaid wicked Deſign,
'*did not* take any Precautions to prevent the ſaid
'Murder and Riot, *nor uſe* the proper or neceſ-
'ſary Means to ſuppreſs the ſame, or to pre-
'ſerve the Peace of the ſaid City, or, after the
'Perpetration of the ſaid Fact, to diſcover, ap-
'prehend, or ſecure the Authors, Actors or A-
'bettors thereof, in manifeſt Violation of the
'Truſt and Duty of his Office of chief Magiſtrate
'of the ſaid City.——And to the End that the
'ſaid enormous *Miſbehaviours* and *Neglects of*
'*Duty* may not go unpuniſhed, and that other
'Perſons may not preſume, through Hopes of
'Impunity, to be guilty of the like for the future,
'it is enacted, That the ſaid *Alexander Wilſon* be
'diſabled from holding any Office of Magiſtracy,
'*&c.*

Here the Conviction by the Parliament itſelf proceeds altogether upon Negatives, or Neglects of Duty in the Provoſt or chief Magiſtrate, upon a very ſingular and extraordinary Occaſion; and ſo far it is a Precedent in point to the preſent Caſe, which in other Reſpects appears to be vaſtly more atrocious than what Provoſt *Wilſon* was guilty of, who, it ſeems, did not give Credit to the Reports that were current before that extraordinary At-

tempt

tempt was made, and ſuffered himſelf to be ſurpriſed and diſconcerted, when the Mob was ſuddenly raiſed which committed that Murder; inſtead of which, here was long Warning, and many Precautions ſeemingly taken by the Provoſt, heartily intended by many of the Citizens, to avert Evil of a much higher Nature, tending to overthrow the Conſtitution and Eſtabliſhment of this united Kingdom.

It appears quite unneceſſary to anſwer the Allegation offered for the Pannel from this Precedent, which has ſurely not the leaſt Tendency to prove, that the Offence, which was here puniſhed by the Legiſlature itſelf, was noways puniſhable by the common Law, or the general Statutes of this Realm.

And as little can it avail the Pannel to enter now into an Argument upon the Expediency of the Reſolution in general, of putting the City of *Edinburgh* in a Poſture of Defence againſt the Rebels; for though it be true, that before any Reſolution was taken upon this Queſtion, it was very lawful and competent for the Lord Provoſt to declare his Opinion, if it was ſuch, for the Negative; yet after it was a Reſolution formed by the Council of the City, with the Conſent and Approbation of the moſt conſiderable Citizens of all Ranks, many of whom had previouſly ſollicited that ſuch Meaſures ſhould be taken, and after he, the Lord Provoſt, had ſeemingly concurred, and given Way to the general Senſe of the Citizens, as well as of the Council, it ſurely then became his Duty, as the firſt Magiſtrate, who had the chief executive Power in his Hands, to exert

ert himſelf, *bona fide*, for the Execution of the general Meaſure that had been thus reſolved; for better indeed had it been never to attempt ſuch Defence, than not to go through with it until actually overpowered by ſuperior Force; or that, to the great Expence and Diſcredit of the City, after many Preparations to provide a Force for its Defence, and Application to the Crown, which was readily granted, for a Warrant to authorize the Regiment, and to the Inhabitants for a Subſcription to pay it, which was filled up with great Alacrity, and many of the chief of them preſſed for Leave to venture their Perſons, as well as contribute their Money for the Cauſe which they had ſo much at Heart, when, to furniſh Arms, the King's Arſenal in the Caſtle was at their Command, and a conſiderable Force aſſembled, that the Provoſt ſhould ſo manage Matters, as that the Defence ſhould be thrown up juſt at the Time that it became needful to make Uſe of all theſe Preparations.

This will require ſome better Excuſe, than that the Provoſt, in his private Opinion, was averſe to the Meaſure in general of defending the City, or that he was afraid of provoking the Rebels to rob his Wine-Cellars at *Leith*, (if that be meant by taking Notice of his great Property there) for it is certain the Provoſt profeſſed to concur with the general Senſe of the City, to provide for and reſolve to make a Defence; and, even upon *Monday* the 16th of *September*, in the Afternoon, in the Council-Chamber, and at the general Meeting in the New Church, it has been alledged, as a Part of his Defence, that he ſtill declared ſtoutly

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ly for adhering to that Reſolution; and, in theſe Circumſtances, for his Council to ſay for him, by Way of Apology for his Conduct in the Articles libelled, that the ſame proceeded from, or is to be accounted for, by his diſapproving, in his Judgment of the general Meaſure of making any Defence, and offering Reaſons now in Support of the Juſtice of that Opinion, inſtead of excuſing him, is in Reality to accuſe him very deeply of acting all along with a Duplicity, which muſt have been highly criminal, profeſſing to concur in the Execution of a Meaſure which in his Heart he diſliked, and, as the Execution of it chiefly belonged to him, in virtue of his Office, managing that in ſuch a Manner as to defeat the Deſign.

As to that Deſign itſelf, the moſt ſanguine Promoters of it never pretended to maintain that the City of *Edinburgh* was capable of holding out a regular or a long Siege; the very Number of the Inhabitants, and the Mouths to be fed, muſt render this impracticable; but, as the Circumſtances which expoſed them to be at all viſited by the Rebels, was the Misfortune of Sir *John Cope*'s getting to the Northward of the Rebel Army in the *Highlands*, and as he was known to be returning from *Inverneſs*, through the low Country, along the Eaſtern Coaſt, and as other Succours were daily expected from *Holland*, it was very reaſonably concluded, that the Preſſure upon the City of *Edinburgh* could be but of ſhort Endurance, and that, very poſſibly, keeping out the Rebels a ſingle Day might ſave the City altogether from falling into their Hands; and the Event in a great Meaſure juſtified the Expectation; for, upon the

Evening of *Monday* the 16th *September*, when the firſt Deputies were ſent out by the Provoſt and others to the Rebels Camp, to treat about the Surrender demanded by the Letter from the Pretender's Son, thoſe Deputies had not yet reached that Camp, when authentick Advice came, that Sir *John Cope*, with his Army, was arrived at *Dunbar*, which is but twenty Miles from *Edinburgh*; A very ſignal Inſtance of the Truth of what is ſaid in the Paſſage above quoted from *Livius*, *Quòd punctò ſæpe temporis maximarum rerum occaſiones amittuntur.*

What then was the Occaſion, or whence aroſe the Neceſſity that obliged the Pannel, on the Afternoon of *Monday* the 16th *September*, to abandon the Defence of the City, for which ſo many Preparations had been made and continued till this very Hour, and when, though the Enemy was at Hand, there was all the Reaſon in the World to believe that Succour and Relief from the King's Troops was not far off, as the Event that very Evening accordingly proved, by the actual Arrival of Sir *John Cope* at *Dunbar*, and authentick Notice thereof being ſent to *Edinburgh* at the Juncture of Time already mentioned.

The Anſwer to theſe Queſtions made for the Pannel, in the Debate upon his Libel, have been, 'That, on the Afternoon of this *Monday*, the 16th 'of *September* 1745. the City of *Edinburgh* was 'in great Conſternation, occaſioned by the Ap'proach of the Rebels, and the threatning Mes'ſages ſent from them, by the Retreat of the 'Dragoons from *Coltbridge*, and the withdraw'ing of the Civil Officers of the Crown from the

'City;

'City; that, in these Circumstances, the general 'Cry of the Inhabitants, at a publick Meeting 'assembled, was for abandoning the Defence of 'the City, after which the Fears of the Inhabi-'tants was the governing Principle, the Multi-'tude had the Power in their Hands, and there 'was no longer any Regard paid to Magistrates 'or legal Authority.'

But to this it is replied, That the Retreat of the Dragoons the Pursuer does not take upon him to approve or justify; very possibly it was made sooner and farther than it was necessary, though it cannot be said that the two Regiments of Dragoons, with the City-Guard of *Edinburgh*, if the whole Rebel Army had come up to them, ill-armed as it was, would have been a Match for such a Superiority of Numbers: But when the Resolution was taken to defend the City of *Edinburgh*, they did not, nor could reckon upon these two Regiments of Dragoons, as what they could rely upon, or promise themselves to be always attending for their Assistance; and when the Defence of the City was abandoned, they were no farther removed than *Musselburgh*, which is but four Miles off, and an Offer was made to the Lord Provost to bring them back, or any Number of them he should desire, to assist in the Defence of the City.

That the withdrawing of the Civil Officers could afford no just Cause for abandoning that Defence; the Lord Justice-Clerk had only gone from *Edinburgh* that Day about Noon, to dine at his own House about three Miles off, and was returning in the Afternoon to the City, when he

got Notice by the Way, that the Rebels were by that Time at the *Weſt* Port of the City, which was not true, but afforded a very juſt Reaſon for his returning to his own Houſe; and though the Lord Advocate at this Time alſo withdrew from the City, and went as far Eaſt as *Muſſelburgh*, yet, before he left the Town, he had concurred with the Provoſt and the Sollicitor, in procuring an Order from General *Gueſt*, for one hundred Dragoons to march into the City, to encourage and ſupport the loyal Inhabitants in Defence of the Town. And he renewed his Advice by Mr. *Groſet*, whom he met going into the City, in the Afternoon, with a Meſſage from the Lord Juſtice-Clerk relating to thoſe Dragoons. And of what Uſe could a ſingle Civil Officer be in the Caſe of a Siege? Or, to what Purpoſe ſhould he ſhut himſelf up within the Walls, and expoſe himſelf, in caſe of the Town's being taken, to become a Priſoner in the Hands of the Rebels?

And as for the affrighted Multitude, who are ſaid to have got the Government into their Hands, it was the Fault of the Lord Provoſt if he permitted this to be: None of the Forces under his Command were withdrawn, and he had ſtill at leaſt twelve hundred well-armed Men under his Command, the Walls of the City repaired and planted with Cannon, and the Caſtle and its Garriſon ready to aſſiſt him: And, in this Situation, why did he ſuffer himſelf to be deſpoiled of his Authority, or to be governed by the real, or by the affected Terrors of the timorous, or of the diſaffected Multitude? Why did he give Way to a general Meeting, in the Church, of an Aſ-

ſembly

ſembly ſo compoſed? Why did he not tell them that the City had already taken its Meaſures and its Reſolution to ſtand upon its Defence, and order all who did not chuſe to depart the City, or to act in its Defence, to repair to their reſpective Houſes, and keep within Doors? He had ſtill the legal Authority in him, and the Means in his Hands to make that to be reſpected, when he had ſo great a Body of Men in Arms under his Command.

In theſe Circumſtances, the Methods he purſued demonſtrated the End which he had in View, namely, to deliver up, inſtead of defending the City; for, in order to juſtify himſelf in abandoning that Defence, he ought to have gone another Way to work, than to aſſemble a promiſcuous Multitude in the Church, excluſive of the Volunteers. If there was truly any Change of Circumſtances occurred, that made it reaſonable now to lay aſide Thoughts of that Defence which had been ſo long provided for and purſued, he ſhould have ſummoned a Council of the ſame, or the like Perſons with thoſe who had firſt contributed to the Reſolutions of making any Defence at all, that is, his own Fellow-Magiſtrates and Counſellors, with the chief Officers of the Volunteers and Trained-Bands, and deliberated with them upon the ſuppoſed Change of Circumſtances; and if, in ſuch Council, it had been debated and reſolved, by Plurality of Voices, to be now impracticable, or inexpedient to perſiſt any longer in the Meaſure formerly concerted, of defending the City, that Reſolution might have juſtified or acquitted him; but nothing of this Kind is alledged, and thereby

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he has taken the whole upon himſelf. He conſulted with a diſaffected Multitude, as ſome of the Perſons preſent in it, of undoubted Credit, ſay it was: And there is no Record of any Reſolution of the Town-Council, or of the Committee above mentioned, of *Monday* the 16th of *September*, when this Change of Meaſures was brought about, nor any Record of the Council after *Friday* the 13th, before the Rebels entred the City, nor of the Committee after *Saturday* the 14th.

As for the particular Facts or Articles charged upon the Pannel, the Purſuer has Reaſon to believe he can prove every one of them; but he now ſays, that neither the ſeparate Relevancy, nor the Proof of every one of them, is eſſential to the Concluſion of this Libel, whereof the general Scope and Averment is, That the Pannel, at the Time and upon the Occaſion libelled, was *faulty* and *negligent*, or guilty of *Malverſation* in the Diſcharge of his Duty; and, for making out this, particular Articles are ſpecified: And altho' every one of theſe ſhall not appear ſeparately material, or ſhall not be proved, it is no Matter, if enough be proved to make out or ſupport the general Charge.

The Caſe is of the ſame Nature as if a civil Action were brought, for Inſtance, for removing a ſuſpected Tutor by the Kindred of the Infant, in order to which a Number of Articles of Misbehaviour were alledged in the Libel; in which Caſe, tho' ſome of theſe Articles ſhould not be proved, or well accounted for by the Defender, yet, if any Number ſhould be made good and accounted for, the general Allegation of the

Libel

Libel would be proved, and the Purſuers behoved to prevail in the Concluſion of their Action.

At the ſame Time, to touch briefly at the particular Articles, it is replied to the Anſwer to the firſt, That it is not the Pannel's Doubt concerning the Point of Law that is charged as a Crime, but his urging that Doubt, *inter alia*, demonſtrates his Backwardneſs to purſue any Meaſures for Defence of the City, for the Doubt itſelf was extremely groundleſs. There are ſundry old Laws againſt private Leagues or Bonds among the Subjects, which have nothing to do with the preſent Caſe; but the only Law, upon which the Pannel's Objection, that it would have been High Treaſon to arm without Authority from the Crown, can be founded, is the 5th Act of the Reſtoration Parliament 1661. intitled, *Act aſſerting his Majeſty's Royal Prerogative in the Militia, and in making Peace and War*, &c. which Act declares, 'That it is and ſhall be High Treaſon 'to the Subjects of this Kingdom, or any Number of them more or leſs, upon any Ground or 'Pretext whatſoever, to riſe or continue in Arms, 'to maintain any Forts, Strengths or Garriſons, 'to make Peace or War, or to make any Treaties 'or Leagues with foreign Princes or Eſtates, or 'among themſelves, without his Majeſty's ſpecial Authority and Approbation firſt interpoſed thereto.'

Now, in the *firſt* Place, whilſt this Act continued in Force, it ſurely could never be meant to comprehend the Caſe of the King's Subjects being called out, by the Magiſtrates acting under his Authority, to take Arms for his Service; for Inſtance,

ſtance, if the Militia of any County ſhould be called out by the High Sheriff, or Lord Lieutenant, to reſiſt a foreign Enemy, or a domeſtick Rebel: And the chief Magiſtrate of a Burgh, within his Diſtrict, has the like Power to the Sheriff, or Lord Lieutenant, to defend the Burgh over which he preſides.

But, *2dly.* This Act, upon which the Doubt is ſingly founded, is repealed by the Act of the 7th of Queen *Anne*, *Chap.* 21. which provides, That nothing ſhall thereafter be High Treaſon in *Scotland*, but what is ſuch in *England*. And farther provides concerning certain Crimes therein mentioned, *viz.* Theft in landed Men, Murder under Truſt, Fire-Raiſing and Aſſaſſination, which were declared to be Treaſon by particular Statutes in *Scotland*, ſhall thereafter be adjudged and deemed to be capital Offences. But concerning the Fact which is made Treaſon by this Act 1661. no ſuch Proviſion is made.

The Purſuer's Replies concerning the other Articles are already in Subſtance made in the foregoing Argument, and he ſhall not prolong this Paper to go through them minutely, and ſhall only farther obſerve, That, as to the new Defence offered to the eleventh Article, concerning the *City-Arms*, that, though it comes with a bad Grace to be now for the firſt Time propoſed, the Purſuer does not oppoſe the Pannel's being allowed to prove this Allegation, and all other Facts and Circumſtances that have been by him alledged for his Vindication or Defence againſt the Charge contained in this Libel.

In reſpect whereof, &c. WILL. GRANT.

INFOR-

July 28. 1747.

INFORMATION for Archibald Stewart *of the City of* Edinburgh, *Merchant, and late Lord Provoſt of the ſaid City, Pannel or Defendant,*

AGAINST

His Majeſty's Advocate, for his Majeſty's Intereſt, Purſuer.

BEFORE entring upon the Objections to the Relevancy of this Libel, it may not be improper, firſt of all, to lay before the Court a genuine and ſuccinct Account of every Fact and Circumſtance which any Way concerns the Conduct of the Pannel, or can give any Light to form a Judgment of it during the Period mentioned in the Libel.

Upon the 17th of *Auguſt* 1745. the Pannel, then Lord Provoſt of the City of *Edinburgh*, had the Honour to receive a Letter from the Marquis of *Tweeddale*, one of his Majeſty's principal Secretaries of State, of the 13th current, acquainting him, 'That their Excellencies the Lords Juſtices 'having received Intelligence, that the Pretender's 'Son was already landed, or intended to land in '*Scotland*, had recommended it to him to give 'Notice to the Provoſt thereof, that he might 'exert his Care and Vigilance on this Occaſion, 'and make Uſe of ſuch Precautions as he ſhould 'judge neceſſary for preſerving the publick Peace 'within the Bounds of his Juriſdiction.'

To this Letter the Lord Provoſt wrote an Anſwer on the 17th, as follows: 'It is with Pleaſure

'ſure I aſſure your Lordſhip, that this Town 'was never better affected, nor more peaceable 'than at preſent. Nothing ſhall be neglected on 'my Part to preſerve People in their Duty to-'wards their King and their Country, and we 'truſt in God that no threatned Dangers ſhall 'ever reach us; at the ſame Time, we are not 'to ſit down in Security, but will keep a watch-'ful Eye, in order to prevent, as far as it is in 'our Power, every Thing that may diſturb the 'Peace of this Place.'

The above Letter was laid before the Magiſtrates when it came to Hand, and the Anſwer was approved of by the Town-Council, at a Meeting on the 23d of *Auguſt*, and, in Purſuance of theſe Reſolutions taken by the Lord Provoſt and Council, the following Orders were forthwith iſſued.

Auguſt 23. Orders were given to levy and raiſe 30 Centinels to be added to the City-Guard, agreeable to the Powers given them by Act of Parliament, and to provide them with Clothing and all other Neceſſaries.

Recommended to the Lord Provoſt and Magiſtrates to direct the Captains and Officers of the Trained-Bands, forthwith to make up full Liſts of all the Perſons belonging to their ſeveral Companies, and to report the ſame to the Magiſtrates againſt *Saturday* next; and that the Captains warn and premoniſh them all to be ready, in caſe of any Diſturbance, to appear with their beſt Arms, upon an Hour's Warning, at the ordinary Places of Rendezvous.

Orders

Orders were given for directing the Conſtables of the City to make out full and ample Liſts of all the Inhabitants and Reſidenters within their Diſtricts, and report the ſame to the Magiſtrates; and to be diligent in inquiring and finding out what Strangers may happen from Time to Time to come within the City, and lodge within their ſeveral Diſtricts.

Orders for a Proclamation, requiring and ordaining all Inn-Keepers, Strangers, and others, who lodge and entertain Strangers, from Time to Time, and as oft as any Stranger ſhall lodge with them, to give in to the Captain of the City-Guard a Note of their Names and Deſignations at their Arrival, and of the Time of their Departure, under a Penalty for each Tranſgreſſion, and the Captains of the Guard ordered duly to report to the Magiſtrates, in Writing, every Morning, Liſts of the Particulars that ſhould be delivered in to them by the Inhabitants.

Theſe Orders, moſt of which proceeded upon Motions made by the Lord Provoſt, were all agreed to by the Magiſtrates and Council, and ſigned by him in their Preſence, and Care was taken of the due and punctual Execution of them all, without any Loſs of Time.

The next Day, being *Saturday*, *Auguſt* 24th, it was ſuggeſted to the Lord Provoſt that it might be fit to call a general Meeting of the Inhabitants, to conſider what was to be done on this Occaſion; to which he agreed, and communicated the Propoſal to the Council at their next Meeting on *Monday*, *Auguſt* 26. who alſo approved of it; and accordingly the Meeting was ordered; and

the moſt ſubſtantial and well affected Burgeſſes were invited to aſſiſt with their Counſel and Advice; and at the Meeting, which could not be conveened ſooner than next Day, *Auguſt* 27. the above Reſolutions and Orders were reported to them by the Lord Provoſt; and the Meeting 'unanimouſly approved thereof, and gave his 'Lordſhip and the Council their hearty Thanks 'for the wiſe and prudent Meaſures they had al-'ready taken; and, farther, offered it as their Ad-'vice to the Magiſtrates and Council, to name 'ſome of their own Number, and ſuch other of 'the Burgeſſes as they ſhould think fit, as a joint 'Committee to conſult with and take the Advice 'of the Lord Juſtice-Clerk, Lord Advocate, Mr. 'Sollicitor, and ſuch of the Lords of Seſſion as 'can be found in Town, with regard to what 'farther Steps the Magiſtrates, Council and Com-'munity can legally take for preſerving the Peace 'of the City, and contributing to defeat the dan-'gerous and wicked Deſigns of the Enemies to 'his ſacred Majeſty, his Royal Family, and pre-'ſent happy Conſtitution.'

Auguſt 28. The Committee were accordingly named by the Council next Day, and that very Evening met with the King's Council, and ſuch of the Judge sas were in Town, at the Lord Juſtice-Clerk's Houſe, where it was propoſed, that a Regiment of a *thouſand Men* ſhould be levied for the Defence of the Town, and Service of the Government, to be ſubſiſted, for three Months, on the Charges of ſuch of the Inhabitants as were willing to ſign an Aſſociation for that Purpoſe. And as it had been, for ſome Time, a general Subject

of

of Converſation and Debate without Doors, how far it was legal to levy ſuch Regiment without a ſpecial Order from his Majeſty, the Opinion of the learned and honourable Perſons preſent was asked upon this Point, and they all agreed, that it could not be legally done without his Majeſty's Warrant. Upon which it was reſolved that the Lord Advocate ſhould make Application for ſuch Warrant, and that, in the mean Time, Trial ſhould be made of the Inclinations of the Inhabitants to concur in this Meaſure, how ſoon the Warrant ſhould be obtained from his Majeſty.

Auguſt 30. The Lord Provoſt and Magiſtrates were employed in receiving Propoſals for putting the Town in a Poſture of Defence; and the Lord Provoſt wrote Letters to the Magiſtrates of Boroughs and Miniſters, for about the Diſtance of fourteen Miles round the City, begging that they would ſend as early Intelligence as poſſible, by Expreſs on Horſeback, of any Bodies of armed Men they could diſcover marching towards this City.

Auguſt 31. About the ſame Time many different Orders were given by the Lord Provoſt to proper Perſons, with a View to put the Town in a Poſture of Defence, which were afterwards executed, particularly for clearing the Town-Wall, building Stairs to get up to the Wall, making Communications from one Place to another, raiſing a Work at *Wallace*'s Tower, to prevent the Communication by the Back of the Caſtle. This laſt Work had been directed at firſt in a very proper Manner by Bailie *Robert Baillie*, Overſeer of the publick Works for this Year; but Bailie *Gavin Hamilton*

Hamilton afterwards ſtopt it, and gave a different Direction, by which that Work was for ſome Time retarded.

Monday, September 2. The Lord Provoſt ſigned an Order in Council for augmenting the Town-Guard to the Number of 126 Men.

September 3. Bailie *James Stewart* and Mr. *Colin MacLaurin* applied to the Lord Provoſt, with a Meſſage from ſome Gentlemen who had met the Evening before, deſiring in general that he would ſee to the Defence of the Town; and particularly, *firſt*, That he would order Moulds to be made for caſting Bullets. *2dly*. That the Sluices of the *North-Loch* ſhould be filled up. And, *3dly*. That a Diſtinction ſhould be made betwixt the Inhabitants of known good Affection, and others, before he came to intruſt them with the Town's Arms.

The Lord Provoſt agreed to the firſt two Propoſals, and ordered the immediate Execution of them, but as to the *third* he demurred. He obſerved to them the Inconvenience of making Diſtinctions amongſt Inhabitants upon bare Suſpicions, eſpecially about the Time of an approaching Election, when Parties were forming, which would lead them to ſpread Calumnies againſt one another upon By-Views; that this might occaſion Heats and Diſſentions dangerous to the Peace of the Town, and even ſtrengthen the Diſaffected by combining them together; that, where any real Ground of Complaint could be condeſcended, he was ready, not only to exclude ſuch Perſons from ſerving in the Trained-Bands, but alſo to oblige them to find Security for their good Behaviour.

After

After this Reasoning the Gentlemen did not insist farther upon that Part of their Proposal, nor lay it before the Council, who were the proper Judges of the Expediency of such Measures, had they thought it fit to be insisted on.

September 4. The Lord Provost met with the same two Gentlemen, and several other Burgesses, in a Tavern, and, after a good deal of Conversation upon the several Expedients proposed for Defence of the Town, he desired they would digest their Proposals, and give them in in Writing, which he would either immediately comply with, or give them an Answer in Writing. This they seemed chearfully to agree to, and promised to give him in their Proposals, but never did it.

September 6. Some of the same Gentlemen presented to the Provost a Petition signed by about 80 or 90 of the Inhabitants, offering to serve as Volunteers for Defence of the City against any Attack; and particularly in contributing to erect the necessary and proper Barricado's for defending the Ports and several Avenues to the City, and praying that the City-Wall might be instantly repaired, and Stairs put up, &c. to appoint proper Places of Rendezvous, furnish them with necessary Arms, and allow them to name their Officers.

The Provost told the Gentlemen who had met with him two Days before, That, after what had past at that Meeting, he expected they would have communicated to him their Intentions, as they promised; but he never would mind any personal Neglect in a Matter where the publick Safety was concerned, and therefore should take

Care

Care to preſent their Petition to the Magiſtrates without Delay, and return their Anſwer.

September 7. He did accordingly order a Meeting of the Magiſtrates to be ſummoned againſt Eleven next Forenoon; and, that there might be no unneceſſary Delay from any Doubtfulneſs concerning the Legality of this Meaſure, the Provoſt adviſed with the Lord Advocate upon that Point in his Way to the Meeting; and, having got his and the Sollicitor's Opinion of the Lawfulneſs of it, he forthwith met with the Magiſtrates, and laid the Petition and Opinion before them; upon which they chearfully approved of the Propoſal, and applauded the Zeal of the Petitioners.

Immediately after the Provoſt went to the Volunteers, who were met in the *New Church Iſle*, and told them their Petition was to be complied with in every Particular, except the Nomination of their Officers: But, notwithſtanding that did of Right belong to him, yet, as he wiſhed of all Things they might have ſuch Officers as they inclined to obey, if they would give him a Liſt of 20 or 30 of their Number, he would confine his Nomination to that Liſt. They complied. He named ſix of the fitteſt Perſons in the Liſt for Captains, with whom they were highly pleaſed, and he left the Nomination of the Subalterns to themſelves, for which they returned him Thanks.

The ſame Day the Lord Provoſt moved in Council, that an Addreſs ſhould be drawn up and preſented to his Majeſty; which was unanimouſly agreed to, and a dutiful Addreſs was accordingly drawn out, approven and ſigned; after which it

was

was reſolved, ' to authorize the Magiſtrates and ' Conveener to employ Perſons with all poſſible ' Speed to put the City in a Poſture of Defence, ' and particularly the Walls thereof. '

In conſequence of this, Workmen were immediately ſent for, and the Lord Provoſt ordered them forthwith to fall to Work, under the Direction of Mr. *MacLaurin*, and to work Night and Day, *Sundays* not excepted, till all was finiſhed, and gave Warrants for impreſſing Workmen.

September 8. The Provoſt, of his own Accord, ordered all the Powder that was in the Town's Magazine to be carried to the Caſtle, which was ſo punctually executed, that he behoved afterwards to take from the Caſtle what was neceſſary for the Service of the Town.

About the ſame Time he wrote an Order to *Robert Davidſon*, Tackſman of the Meal-Market, to clean out the Granaries, and provide Meal.

September 9. This Morning the Provoſt having occaſionally heard that his Majeſty's Sign-Manual, authorizing to levy the Regiment propoſed, had come the Day before to the Lord Advocate's Hand, he went and waited on his Lordſhip, and, upon receiving the Sign-Manual, he immediately called a Council, and produced the ſame, which was addreſſed to the Lord Provoſt, Magiſtrates and Town-Council of *Edinburgh*; and recites, ' That it had been repreſented to his Majeſty, ' that the Lord Provoſt, Magiſtrates, Town-' Council, Burgeſſes, and others of his City of ' *Edinburgh*, from the great Loyalty and Affec-' tion to his Perſon and Government, were at ' this Juncture willing and ready to raiſe and

' maintain,

' maintain, at their own proper Charge and Ex-
' pence, by voluntary Subſcription and Contribu-
' tion, One thouſand Foot for the Defence of the
' ſaid City, and the Support of his Government;
' and they were deſirous of obtaining his Royal
' Licence and Authority for the ſame: His Ma-
' jeſty therefore, repoſing intire Truſt and Confi-
' dence in the Lord Provoſt, Magiſtrates and
' Town-Council of his ſaid City, did thereby au-
' thorize and impower them to raiſe, form and
' diſcipline One thouſand Foot, to be employed
' for the Purpoſes above mentioned; and his
' Majeſty did thereby farther order and com-
' mand, that the ſaid One thouſand Men ſhall be
' under the Direction of the Lord Provoſt, Magi-
' ſtrates and Town-Council of *Edinburgh*. For
' the Doing whereof this ſhall be a ſufficient
' Warrant.'

As by this Warrant the Direction of the Regiment was placed in the Magiſtrates and Town-Council, ſo, as ſoon as it was read, they took the Direction into their own Hands, ' and ap-
' pointed, as a Committee, the preſent and old
' Magiſtrates, Convecner, Deacons *Lauder* and
' *Porteous*, or any five of them, the Lord Pro-
' voſt being always one, and, in caſe of his Ab-
' ſence, any Nine of them, to be a Quorum, to
' conſider what is moſt proper to be done upon
' this Occaſion for levying the ſaid Thouſand
' Foot; and particularly to take in the Subſcrip-
' tion of ſuch of the Inhabitants as are willing to
' contribute for levying and maintaining the ſaid
' Thouſand Foot, with their proper Officers, to
' be named for the Purpoſes mentioned in the
' ſaid

'said Sign-Manual, for the Space of three Months after they shall be so insisted; as also to consider what is proper farther to be done for the Safety of this City, and for Support of the Government, which Committee shall meet at the Goldsmiths Hall, twice each Day, at the Hours of Eleven in the Forenoon, and Four in the Afternoon; and recommended to the said Committee, to keep a Book, into which all their Proceedings and Actings shall be regularly ingrossed, to the End the same may be reported to the Council from Time to Time.

'At the same Time, the Council ordered the Serjeants, Corporals and Drums of the City-Guard to beat up for Volunteers to compleat the Thousand Foot; and they nominated the Lord Provost to be Colonel and Commander of the said Thousand Foot, with Power to him to conduct and direct them, and the other Officers who shall be named to command under him, as the Council shall think proper, or as the Exigencies of Matters shall require.

And the Lord Provost shewed his chearful Concurrence in this Measure, by a Subscription far beyond any other that was made to this Regiment.

September 10 *to* 13. From this Day, to the 13th of *September*, there are daily Proceedings of the Council and Committee above named, who went on with all Diligence in raising the Men, taking in Subscriptions, providing Arms, Grain, and other Necessaries, and doing every Thing that was judged proper for putting the Town in a Posture of Defence. It is unnecessary to trouble the Lords

with reciting minutely every Particular which appears to this Purpoſe from the Records of the Council, and the Minutes of the Committee, which regularly met for carrying on the Buſineſs intruſted to them; and the Lord Provoſt appears, by their Minutes, to have been preſent at every Sederunt.

The Pannel is deſirous to abridge the Trouble of the Court, in reading a long Story, as much as poſſible; and therefore ſhall but juſt mention a few of the many Inſtances of his Care and Concern in carrying on the general Meaſure now reſolved on, for the Defence of the Town, about this Period.

That whenever any Complaints were made of the Slowneſs of the Workmen, that they were not going on with that Diligence they ought, the Lord Provoſt ſeverely reprimanded them, and gave freſh Warrants to preſs Men and Carts, with ſtrict Orders to loſe no Time.

That Bailie *Robert Baillie*, who had the Inſpection of the publick Works, with his Committee, were ordered to ſee that every Thing was done that was neceſſary for the Defence and Preſervation of the Town; and he had the Charge of impreſſing Workmen and Carts, and exercing all the Authority that was neceſſary for carrying on the publick Works with the utmoſt Diſpatch.

That the Provoſt, on the 10th of *September*, wrote a Letter to Captain *John Dalrymple*, and alſo applied to Captain *James Murray*, to take upon them the Command of the Volunteers: But they both refuſed to accept of a Command of

Men

Men who had not been accuſtomed to military Diſcipline.

That the Provoſt moved in the Committee, to recommend to ſome of the City-Gaurd, *Edinburgh* Regiment, and Gentlemen Volunteers, that they ſhould learn the Exerciſe of throwing the Hand-Granadoes.

That, in order to preſerve the publick Money from falling into the Hands of the Rebels, the Provoſt called a Council, and propoſed, that what was owing of the King's Ceſs ſhould be paid up to the Receiver-General, tho' it had not been paid by the Inhabitants to the Collector; and for that Purpoſe the Provoſt forthwith ſigned an Order on the Caſh Accompt for 1000 *L. Sterling*, payable to the Receiver-General, to account of the Ceſs due by the City, which was delivered to the Receiver-General.

September 13. That the Proceedings of the Committee for levying the City's Regiment, and forewarding the neceſſary Steps to be taken for the Safety and Defence of the Place, were read over in Preſence of, and conſidered by the Council, and unanimouſly approven of, and the Council recommended to the Committee to continue in their Diligence.

September 14. Notice having come to Town this Morning, that the Rebels had paſſed the *Forth* ſome Miles above *Stirling*, and were directing their March towards *Edinburgh*, and Colonel *Gairdner*'s Dragoons were retiring before them, the Lord Juſtice-Clerk ſent a Meſſage to the Provoſt, deſiring he would meet with him, and ſome Lords and Gentlemen of the Army, and others, whom he

he was to bring from the Country, in order to concert what was to be done in this Exigence. The Provoſt immediately went to Lord Juſtice-Clerk's Houſe, and told his Lordſhip he was ſenſible how much the ſtood in Need of ſuch Advice, that he would always be ready to follow it, and would be ſure to attend them whenever called for.

He went on ſtill in doing every Thing that could be thought of as neceſſary to provide for the Defence of the Place. He ſigned a Warrant this Day, along with Lord *Somerville* as Juſtice of Peace, to preſs Men and Carts for carrying Sand and other Materials to the Ramparts and Works about the Walls, which was accordingly executed, and alſo to bring in Hay, Corns, and Proviſions into the Town, and *John Walker* and *William Mercer* were ſent to *Leith* for that Purpoſe.

This Day alſo the Provoſt ordered twenty four Men to attend Captain *Bryden* in mounting the Cannon upon the Walls;

And granted Warrant to bring into the Town all the Ladders, Arms and Ammuniticn, which were in the *Canongate*, *Potter-Row*, and other Suburbs adjacent to the Town, that they might not be ſeized by the Rebels.

Sunday, September 15. We are now come to *Sunday* the 15th of *September*; and as the Proceedings of this Day, and the next, are greatly miſrepreſented, as well as curtailed in the Purſuer's Information, it is neceſſary to be a little more particular in reciting them.

Upon *Sunday* Morning, when the Committee were met in the Goldſmiths Hall, a Gentleman came

came with a Meſſage from General *Guyſt*, to acquaint them, that when it was propoſed, at a Meeting at his Houſe, to order *Hamilton*'s Regiment of Dragoons to join *Gairdner*'s, and make a ſtand againſt the Rebels, the General made a Difficulty, in regard he had no Body of Foot to ſuſtain them. Upon which a Captain of the Volunteers undertook, that, at leaſt, 250 of theſe Gentlemen would be ready to march upon any Service the General would order them; he believed more would, but he could anſwer for 250, providing the Provoſt would allow 50 of the Town-Guard to go alongſt with them; and the Gentleman deſired to know if the Provoſt would conſent.

On firſt hearing of this Propoſal, the Provoſt had ſome Difficulty to part with the Town-Guard, as being the Body of Men he could moſt depend upon, in caſe of any Occaſion, to defend the Town; on which Bailie *Robert Baillie* ſaid, he thought 50 of the Town-Guard could not be better employed than in ſupporting ſo many of the Volunteers, if they marched out; and inſtantly the Provoſt, upon Recollection, agreed, and anſwered, 'Mr *Baillie*, you are in the right, in 'Place of 50, they ſhall have the whole Town-'Guard, and as many of the *Edinburgh* Regi-'ment as are capable of doing Service.'

The Provoſt immediately went down in a Coach, alongſt with the Gentleman who had brought the Meſſage, and told the General the Reſolution of the Committee as to ſending out the Town-Guard and the *Edinburgh* Regiment; upon which the General ſent Orders to *Hamilton*'s

Regi-

Regiment to march through the Town and join Coloniel *Gairdner's*.

The Provoſt came up to Town from the General's in a Coach, along with Provoſt *Drummond*, the firſt Captain of the Volunteers, and by the Way met two of their Officers, who came into the Coach, and told them, they were ſure the Volunteers would not comply with the Meaſure propoſed, and that they were now ſeparated, and had gone Home.

The Provoſt asked Mr. *Drummond* what would be the beſt Signal to bring the Volunteers together? He ſaid they had only two, three Guns from the Caſtle, or ringing the Alarm-Bell. The firſt, ſays the Provoſt, is not in our Power, as the Caſtle is ſhut, and the other in Time of divine Service may alarm the Town: No Help for it, ſays Mr. *Drummond*, the Bell muſt be rung.

The Bell was accordingly rung, which alarmed the People, and made them leave the Church. The Volunteers conveened in the *Lawn-Market*, and huzza'd *Hamilton's* Dragoons as they paſt along. Their Officers applied to the Provoſt, and asked if he had ordered them to go out and join the Dragoons. He told them, he had no Power to order them any where out of Town; but he had conſented, that as many as were inclined ſhould go out with the Town-Guard and *Edinburgh* Regiment, to ſuſtain the Dragoons in oppoſing the Rebels. The Meaſure was generally not liked by the Volunteers, and was imputed to the Provoſt as if he had been the firſt Propoſer, as one of their Officers told him with a good deal of Warmth.

After

After many Expoſtulations among themſelves, at laſt Mr. *Drummond* marched up on the Head of his Company, and ſome others followed. They went the Length of the *Weſt* Port, and then returned.

Two of their Officers went forward to ſtop the Town-Guard and *Edinburgh* Regiment, who had marched on to ſuſtain the Dragoons, and found them between the *Coltbridge* and *Bruchill*: But the Provoſt being informed of this, ſent Orders that the City Regiment and Town-Guard ſhould march forward, and take their Orders from the commanding Officer. General *Gueſt*, when he heard of the Return of the Volunteers, was vexed at the Diſappointment, and ſaid, If he had expected it, he would not have ordered *Hamilton*'s Regiment to go out to join the other in Defence of the Town.

The Provoſt ſent up Mr. *Stewart*, chief Conſtable, to the Caſtle, with a ſigned Order for a Number of Matches for the Uſe of the Cannon mounted on the Town-Walls, which were accordingly delivered, and brought down to the *Goldſmiths Hall*.

The Provoſt conveened the Trained-Bands under their proper Colours and Officers, and gave them Notice to hold themſelves in Readineſs upon a Minute's Warning, and three Companies of them were ordered to mount Guard.

He alſo ordered the Conſtables to ſearch Houſes, of which there was any Suſpicion, for Arms and treaſonable Papers.

This Afternoon Brigadier *Fowkes* came to Town, and the Provoſt was called in the Even-

ing

ing to Lord Juſtice-Clerk's, where Lord Advocate, General *Gueſt*, Brigadier *Fowke*, and ſeveral other Gentlemen of the Army were preſent, a Propoſal was made, that the Dragoons might be brought into Town, with a View to give them ſome Reſt and Refreſhment, and have their Horſes fed on the Street: But after the Thing was debated among the Gentlemen of the Military, who conſidered that the Avenues of the Town might be taken Poſſeſſion of by the Rebels, the Streets barricadoed, and the Houſes lined, and that the Dragoons might very probably, by this Means, fall into the Hands of the Rebels, it was agreed to be a Thing not to be attempted.

From this the Provoſt went alongſt with Major *Cochran*, Captain *Murray*, Provoſt *Drummond*, and others, to the Houſe of Mrs. *Clark* Vintner, where a Diſpoſition was made of the ſeveral Corps of armed Men into different Quarters of the Town, particular Guards aſſigned them, and Places for their Alarm-Poſt condeſcended on, where each of them ſhould appear on the proper Signals; Copies of which were given to the commanding Officers of the different Corps.

This Afternoon the Provoſt met with Sir *Robert Dickſon* upon the Street, who had come in with a conſiderable Number of Volunteers; he received him with great Civility, as both his perſonal Character and Errand deſerved; immediately gave Orders that his Men ſhould be lodged in the Kirk, and that a ſufficient Quantity of Bread and Ale ſhould be carried there for a Refreſhment to them without Delay.

About

About this Time Meſſages were ſent to the Caſtle and *Leith*, to procure Gunners for loading the Cannon; Mr. *Grace* could afford us none out of the Caſtle; Bailie *Scot* made Search over all *Leith*, aſſiſted by *David Dryburgh*, *Charles* and *Alexander Sheriffs*, and ſent us up what could be found there; Application was alſo made to the *Urſula*, Man of War, and the Anſwer returned, That the Captain could ſend none.

By Orders from the Lord Provoſt, the great Guns upon the Walls were begun to be charged on *Sunday* Evening, and the Gunners employed continued to charge them till Two o' Clock next Morning.

The Provoſt this Evening ſent up an Officer of the Town-Guard to beg the General would order a Signal to be put up in the Caſtle, to diſcover the Road the Rebels ſhould take to *Edinburgh*, that Meaſures might be taken to turn the whole Force, as much as poſſible, to that Side; and an Anſwer was returned, That his Requeſt ſhould be complied with.

All this *Sunday* Evening, from 7 to 12, the Provoſt was conſtantly employed, either in the *Goldſmiths Hall*, or at the different Guards of the Town, converſing with the military Men about Orders, or with the Captains of the Trained Bands. At 12 at Night he began the grand Round, which laſted till about 4 o' Clock in the Morning.

Monday, *September* 16. Having gone home for an Hour or two, he was upon the Streets again at 6 in the Morning, reviewing the Barricadoes

that were making at the Ports, and ſuperintending the other publick Works about the Town.

At 9 o' Clock, He ordered Bread and Ale to be carried out to the Dragoons; and, upon Mr. *Fowkes*'s applying to him for the Town-Guard and *Edinburgh* Regiment to be ſent out to join the Dragoons, he immediately ordered them to parade in the *Parliament-Cloſe*, and march out, which they did.

He next gave Orders that Mutton, Beef, *&c.* ſhould be bought, and boiled in all the Taverns in Town, for the Uſe of the Dragoons, and went through ſeveral of the Taverns with Mr. *Baillie* and Mr. *Hamilton*, and gave Directions thereanent.

Being informed by Colonel *Clayton*, that the Proviſions firſt ſent out were not ſufficient, he expreſſed his Diſpleaſure that his firſt Orders had not been fully obeyed, ſent to the Bakers and Brewers, and cauſed preſt Carts to carry out Proviſions.

Betwixt 10 and 11 o' Clock, When ſitting in a Cloſet in the Coffee-Houſe with Commiſſary *Leſlie*, *Andrew Alves* came in to them, and ſaid, That, in his Way to Town, he happened to ride near the Rebels; that the Duke of *Perth* knew him, and ordered him to come nearer; and, upon hearing he was going to *Edinburgh*, ſaid, I underſtand the Provoſt and Magiſtrates are making great Preparations againſt us, but we are reſolved to pay them a Viſit; if they will keep their Arms in their Poſſeſſion, and allow us to come peaceably in to Town, they ſhall be civilly dealt with; if not, they muſt lay their Account with military Execution, or Words to that Purpoſe. And turning to a young Man he called the Prince, he asked him, Whether

ther or not that was his Pleaſure? Which the other ſeemed to aſſent to. The Provoſt ſaid, Mr. *Alves*, this is a very extraordinary Meſſage, but they will find we are not to be intimidated by Threats.'

The Provoſt went immediatcly over to the Goldſmiths Hall, and acquainted two Gentlemen of the Committee of what Mr. *Alves* had ſaid, and conſulted with them what was proper to be done. They were of Opinion it was moſt proper to neglect it, and take no Step that might publiſh to the Inhabitants the Threatning they had received.

The Provoſt, after reviewing ſome of the Works about the Town, on his Return to the Street, was informed that *Andrew Alves* had adventured to repeat to others what had paſt betwixt him and the Rebels; upon which he went ſtraight to the Lord Advocate to ask his Advice, where he found Mr. *Alves*; and, by the Advocate's Advice, he ſigned a Warrant for committing him.

Monday, September 16th, Afternoon about 3 a Clock, The Provoſt being then in Mris. *Wilſons*, was called out from the Company by Mr. *Baillie* and Mr. *Forreſt*, who acquainted him, that a Petition to the Magiſtrates was handing about among the Inhabitants, deſiring they might be conſulted upon what was proper to be done upon this Juncture. At this the Provoſt was ſurpriſed, as well as vexed: However, as ſoon as he came out to go to the Goldſmiths Hall, he was met by a great Crowd of Inhabitants, who delivered to him the Petition, which is produced in Proceſs,

praying,

praying, That the Magiſtrates, before they came to any Reſolution, either of defending or giving up the Town, would call a Meeting of all the principal Inhabitants and Heritors, at preſent in the Place, to conſult with them what is proper to be done in an Affair of ſo great Importance.' Upon this the Provoſt immediately went to the Goldſmiths Hall; they followed him, and endeavoured to crowd in: Upon which he was provoked, and asked, If they meant to inforce their Petition by Numbers, begged they would be gone, and leave it to the Magiſtrates, who were to conſider what was moſt expedient to be done with reſpect to the Place; and immediately he cauſed the Drum to go about, and order the Inhabitants to retire from the Streets, who were all in an Uproar upon hearing that the Dragoons had retreated from the Rebels.

The Provoſt, in his Way to the Ports, met with the Lord Advocate and Sollicitor, who asked him, If he did not think 100 Dragoons might be of Uſe to be brought into the Town; and he agreeing that they might, the Advocate asked him to ſign a Letter in Conjunction with him and the Sollicitor, to General *Guest*, to ſend in 100 Dragoons, which the Provoſt immediately did, and then went on to ſee the Gates barricadoed.

After the Gates were barricadoed, he ordered Mr. *Stewart* the Conſtable to mount the Walls, and look out for the Dragoons; and ſo ſoon as he ſhould ſee them come near the Walls, to open the Gates and let them in: He had before provided a large Quantity of Hay for the Uſe of their Horſes.

As

As he was returning up the *Weſtbow*, a Citizen of very conſiderable Subſtance, and undoubted Loyalty, came to him, and ſaid, 'He applied to him in Name of himſelf, and many of 'the moſt conſiderable Citizens, to expoſtulate 'and beg that the Defence of the Town might 'not be inſiſted on, which could only tend to expoſe the Lives of the Citizens.' To which the Provoſt anſwered, 'That his Requeſt could not 'be granted.'

In returning to the Goldſmiths Hall, the Provoſt gave Captain *Hamilton* Orders, with reſpect to the City-Guard, 20 of them to remain at the *Weſtport*, 20 to go to *Briſtol* Port, 20 to the *Netherbow*, and 40 of them to remain in the Guard, to move to any Place where they ſhould be moſt needed, which was allowed to be a very proper Diſpoſition.

During all the Way in his Return, the Cries of the People were heard on every Side, 'What, 'would he have them all murdered, by defend'ing the Town after the Dragoons had run a'way?' And other Words to that Purpoſe.

Aſſoon as he was returned to the Hall, where the Committee was met, he ſent Bailie *Hamilton*, *Robert Baillie* and *John Forreſt*, for the Lord Juſtice-Clerk, Lord Advocate, and the Sollicitor, to beg they would come and aſſiſt them with their Counſel, ſaying, he chuſed to be determined only by their Advice. They returned, and reported that they had all gone out of Town.

The Provoſt expreſſed great Concern when he found himſelf deſtitute of the Advice he moſt relied upon at ſo critical a Juncture, and then deſired

ſired that the Officers of the Army ſhould be ſent for, and the Officers of the Volunteers who were conveened at their Poſts by the ringing of the Alarm Bell: Moſt of the Captains, and ſome other Officers of the Volunteers came; but no other Military Men were found in Town, except Captain *James Murray* and Major *Cochran*. The Lord Provoſt addreſſed himſelf to them, and ſaid, 'That for his Part he was willing to encounter any Danger for the Defence of the Town: He hoped the Inhabitants would do their Duty, and hoped the Enemy might be kept out until Aſſiſtance ſhould come to their Relief; and asked Mr. *Murray* what was his Opinion?' Who ſaid, he pitied him, but was at a Loſs what Advice to give: And being farther preſſed by the Provoſt, he anſwered, That if the Volunteers, Trained-Bands, and other armed Men within the Town, were diſpoſed to do their utmoſt, he believed they might make a good Defence; but if they were not diſpoſed to fight, he would adviſe the ſending the Government's Arms to the Caſtle.

The Provoſt ſaid, 'He hoped thoſe Gentlemen who had undertaken the Defence of the Town, would not now abandon it when the Danger drew near, but remember what Expence the Town had been at, what Aſſurance they had given to his Majeſty, and what they had promiſed to perform, when the Danger was at a greater Diſtance.' He then asked all the Captains and Officers of the Volunteers that were preſent, what he could expect from them? One ſaid, he did not find any Diſpoſition in his Men

to

to fight: Another told, That there did not remain fifteen of the Company to which he belonged; but, as he had promiſed to riſque his Life in Defence of the Town, he would ſtill do it, though he was ſure not five of the fifteen would follow him: And others of them declined to make any Anſwer at all.

About this Time *Walter Groſet* came into the Goldſmiths Hall, and he ſaid he was ſent by the Lord Juſtice-Clerk and Lord Advocate, to deſire the Provoſt would ſend an Order to General *Fowkes* to bring the Dragoons into Town. To which he anſwered, That he was ſurpriſed at the Meſſage, after what had paſt the Night before; that he would ſign no Order, as he had no Power over the Dragoons; but, if they pleaſed to ſend them in, they ſhould be made very welcome, and we ſhould join them in Defence of the Town.

Mr. *Groſet* ſaid, that the Lord Advocate and Juſtice-Clerk thought it proper that the Provoſt ſhould ſign the Order. To which he anſwered, That he did not chuſe to make himſelf accountable for the Dragoons, after what he had heard in the Lord Juſtice-Clerk's laſt Night; but thought it more proper that they ſhould ſend their Orders, if they had altered their Way of thinking about that Matter. Mr. *Groſet* deſired to have the Provoſt's Anſwer in Writing, with which he readily complied.

About this Time the Fears of the Inhabitants had brought a great Crowd into the Goldſmiths Hall, and about the Door of it, who all cried out againſt the Madneſs of defending the Town, when

when all the Officers Civil and Military had left it, which ſhewed they underſtood it could not be defended. The Crowd ſtill increaſing, a Member of the Council propoſed they ſhould go to the New Kirk Iſle, as they were like to be ſmothered in that narrow Place: Upon which the Lord Provoſt left the Hall, and went out to the *Parliament-Cloſe*, where great Numbers came up to him, remonſtrating, in the ſtrongeſt Terms, againſt attempting any Defence, which could have no other Effect, but to expoſe them to military Execution.

The Provoſt did all he could to reanimate the People; but, when he was talking to them, Mr. *Cunningham* of *Gairdner*'s Dragoons came up to him on Horſeback, with a Meſſage from Lieutenant-Colonel *Whitney*, deſiring he would order the Dragoons Baggage to be forthwith ſent out to them, becauſe they were going to *Haddington*; that they found they had been greatly deceived in the Number of the Rebels, for now they computed them to be near *Eight thouſand*. This Account which was given by Mr. *Cunninghum*, in the Hearing of the Crowd, did greatly contribute to increaſe the Terror of the Inhabitants, who were heard crying every where, *What a Madneſs it was to pretend to ſtand out againſt ſuch a Number.*

The Provoſt expoſtulated with them in the *New Kirk Iſle*, 'That he hoped they would 'not now abandon the Defence of the Town; 'that he was ready to concur in it to the utmoſt 'of his Power, and expected the Danger would 'not be ſo great as ſome Mens Fears made it.'

But

But upon this ſuch a Noiſe was raiſed, that nothing could be heard but a general Cry for giving up the Town, not above two or three of the whole Multitude preſent appearing to be of a different Opinion.

About this Time a Letter was thrown in, directed to the Lord Provoſt and Magiſtrates, which was opened by *Walter Orrock*; and when he told it was ſigned by *Charles* P. R. the Provoſt ſtopt him, and ſaid he would not witneſs the reading ſuch a Letter: Upon which many calling out to read, he ſaid he had been too long there, and with Difficulty got to the Door, and returned to the *Goldſmiths Hall*, where the Magiſtrates alſo came, and a great Number of the Inhabitants, and immediately they ſent to conveen the Town's Aſſeſſors, but only one of the four was to be found: They asked his Opinion what was to be done with reſpect to the Letter, and whether it ſhould be read; but he having declined to give any Opinion, and the Inhabitants expreſſing the utmoſt Uneaſineſs both within and without Doors, the Letter was read without any Authority from the Provoſt, and contained a Threatning of their higheſt Reſentment, in caſe any Oppoſition was made to their Entry, or that any of the Cannon or Arms were allowed to be carried off.

After this nothing was to be heard but loud Cries againſt a fruitleſs Oppoſition, and againſt Delivery up of the Town's Arms to the Caſtle, which, it was ſaid, would occaſion Deſtruction to the City; and many in the *Hall* inſiſted that a Deputation ſhould be ſent out, to beg that Hoſtilities might not be commenced againſt the City, until

they had Time to deliberate what Anſwer they ſhould return; and as it was believed the Enemy was at the Gates, the Deputation was immediately hurried away, *viz.* Bailies *Gavin Hamilton*, *John Yetts*, *David Inglis*, and Conveener *Norrie*.

The Volunteers in the mean Time did, without applying to the Lord Provoſt for Orders or Directions, of their own Accord, take a Reſolution to give up their Arms to the Caſtle, which they forthwith executed, and thereby diſmiſt themſelves from the Service.

One of their principal Officers, whoſe Zeal or Bravery was never at any Time called in queſtion, upon his Return from the Caſtle, was met on the Street by a Gentleman, who told him, the Rebels were not near ſo numerous or formidable as they had imagined, and that it would be a Shame to ſurrender the Town to them. But the Officer anſwered, It might be ſo, but it could not now be helped; that Information had come too late.

And, ſome Hours before, another Gentleman of the ſame Corps had ſent a Meſſage to his Wife, begging her not to be under any Fear about him, for the Town was to be given up.

At this Time a Meſſage came from the Caſtle, by *Robert Griffith* a Gunner, deſiring that the Cannon on the Town-Walls might be hailed up. It was the Opinion of the Committee, that the Provoſt ſhould give no Orders in theſe Matters, after what had paſt; but he told the Meſſenger, that Mr. *Gueſt* was at Liberty to do what he thought beſt for the Service of the Government, and nothing hindred him to ſpike up the Cannon,

if

if he thought fit: And he was alſo told, that the Town-Officers would ſhew him where the Cannon were, for that Purpoſe.

About the ſame Time the Adjutant of the City-Regiment wanted to know what ſhould be done with the Arms under his Care, and was told, that it was not thought proper the Provoſt ſhould give Orders thereanent; that the Council was afraid the City might ſuffer from the Cruelty of the Rebels, and even that they themſelves might ſuffer from the Populace, if ſuch Orders were given; but, at the ſame Time, that the Soldiers of the new-levied Regiment, poſſeſt of thoſe Arms ſhould be privately acquainted to return them to the Caſtle; and by this Means the whole Arms of the City-Regiment were returned, except thoſe of the Men upon Guard.

But it was not practicable to get the Arms of the Trained-Bands conveyed to the Caſtle in this Manner. Theſe Arms were in Poſſeſſion of the ſubſtantial Burgeſſes and Houſholders of the Town, who conſidered them as their own Property, having been bought with their own Money when admitted Burgeſſes: And as moſt of them had not only their Wives and Children, but the greateſt Part of their Subſtance within the Town, they would not conſent to expoſe all that is dear to them to the Rage of an incenſed Enemy, for the Sake of keeping thoſe Arms out of their Hands, eſpecially as they were in themſelves of very little Value, being generally old Guns without Bayonets, bought at Half a Crown or three Shillings a-piece, more for Shew than Uſe, as they

were

were never otherways employed than at a Birth Day Parade.

But, of little Value as they were, the Provoſt was deſirous, if poſſible, they ſhould be ſaved out of the Hands of the Rebels; and as neither he nor the Council were able of themſelves to compel the Inhabitants to part with them, he thought of the only Expedient that could be taken in ſuch a Caſe, which was, to ſend a Meſſage to the Caſtle to inform Mr. *Gueſt* of the Situation of the Town, and the general Conſternation of the Inhabitants, and to beg that he would ſend a Party down to take up their Arms, as the Council was not at Liberty to give Orders, for Fear of the Conſequences with regard to the Town. This Meſſage was delivered to General *Gueſt*, but was not complied with.

From the *Goldſmiths Hall* the Committee went to the Council-Houſe, and were alarmed with the Cry, that the Rebels had broke into the Town. This was owing to the Fright of a Party of Dragoons, who guarded their Baggage at the *Netherbow* Port, and when the Port was opened to let out the Baggage, a great Crowd burſt in, which the Dragoons imagined were the Rebels, and rode off as hard as they could, in great Terror, to the Caſtle.

Upon this Alarm the Commandant put the Provoſt in Mind of the Threatning ſent to the Town, that every Man who was found in Arms ſhould be put to Death; and asked at the Provoſt what the Trained-Bands ſhould do at the *Weigh-Houſe* and *Weſt* Port, when the Rebels had already burſt in at the other End of the Town. The only

Anſwer

Anſwer any Man alive could give, in ſuch Circumſtances, was, they ſhould quit their Arms to avoid being maſſacred.

After this Alarm was over, Mr. *Groſet* arrived with Accounts that Sir *John Cope* had been ſeen off *Dunbar*, and, as the Wind was unfavourable for bringing them up the Frith, it was thought he would land that Night at *Dunbar*, and might ſoon come to their Relief. Upon which Bailie *James Mansfield* was immediately diſpatched to call back the Deputies, and a Town-Officer was alſo ſent to run the ſhorteſt Way and ſtop them; but neither could overtake them.

It being now again reſolved, upon this Proſpect of Relief, to put the Town in a State of Defence, Mr. *Groſet*, and Mr. *Lindſay* Secretary at War, went up to the Caſtle along with Proveſt *Coutts*, and acquainted the General with the good News of Sir *John Cope*'s Arrival, and aſked if he would think it proper to order the Dragoons back for the Defence of the City, and whether he would deliver back the Arms that had been returned to the Caſtle. General *Gueſt*'s Anſwer was, That he did not think it for his Majeſty's Service to order the Dragoons back to *Edinburgh*, it being more fit they ſhould join Sir *John Cope*'s ſmall Army: That the Gentlemen of the Council might put the Burghers Arms into the beſt Hands, and if, thereafter, the Lord Provoſt ſhould find a Diſpoſition in the Inhabitants to defend the Town, he might let him know: And added, that he would ſend down a Meſſage to the Serjeant that was nailing up the Cannon on the Walls, to ſtop him.

After

After the Gentlemen had returned from the Caſtle, it was propoſed in Council, by a Captain of the Volunteers, that the Alarm-Bell ſhould be rung: But it was objected by ſome of the Members, that nothing of that Kind ought to be done till the Deputies were returned, leſt the Rebels, who were apprehended to be very near, ſhould thereby be enraged, and make them ſuffer for it. One of the Reverend Miniſters of the City, who had been moſt active and zealous in the Service of the Government, and ſome other well affected Burgeſſes, agreed in this Opinion; and all of them were poſitive that nothing could be done for Defence of the City, unleſs the Dragoons were brought back: Upon which Mr. *Groſet* roſe up, and ſaid he would go and endeavour to bring them back; and Provoſt *Drummond* and he went off upon that Errand, but did not again return.

Mr. *Lindſay*, the Secretary at War, asked the Lord Provoſt, if he would ſend an Order to General *Gueſt* to redeliver the Arms which had been ſent up to the Caſtle. Had the Provoſt been capable of any Degree of the bad Intention the Purſuer would now ſuppoſe, it was eaſy to comply with this Requeſt, for one tenth Part of thoſe Arms would have been of more Value to the Rebels, than the whole Arms that were in the Hands of the Burghers: But, as his conſtant Intention was to bring no Arms or Ammunition from the Caſtle, but as there was neceſſary Occaſion for them, leſt they ſhould fall into the Hands of the Rebels, ſo, agreeably to this Intention, he anſwered Mr. *Lindſay*, 'That, before he gave ſuch

'Orders,

'Orders, he behoved to ſee a better Diſpoſition
'in the Inhabitants to defend the City.'

For, ſince the Alarm of the Rebels burſting into the Town, moſt of the Inhabitants, dreading the Execution of their Threats againſt ſuch as ſhould be found in Arms, had quitted their Arms and gone home.

The Gentlemen who had gone to the Rebel Camp returned, and brought their Anſwer, requiring the City to receive their Prince as Prince Regent, and that no Arms or Ammunition ſhould be ſuffered to be carried off or concealed; and demanding an Anſwer againſt Two o'Clock in the Morning, their Camp being then at *Gray's Mill*, about two Miles diſtant from the City. After receiving this Anſwer, the Gentlemen of the Council, with ſome other Citizens, continued together deliberating what was to be done, till Two o'Clock in the Morning, many of them expecting Relief from the Dragoons, which Provoſt *Drummond* and Mr. *Groſet* had been ſent ſome Time before to bring back, if poſſible, to their Aſſiſtance.

When the Clock ſtruck two, and no Relief came, it was propoſed to ſend a ſecond Deputation, in order to gain a farther Time, which was unanimouſly agreed to, and Bailie *Robert Baillie*, Provoſt *Coutts*, with two or three other Counſellors, were ſent off to beg a Delay till nine or ten o'Clock, by Reaſon the Burghers were all in Bed, and could not be conveened for ſeveral Hours: At the ſame Time they were authorized by the Provoſt to ſay, 'That he would rather die than

'comply

' comply with the Condition of receiving their
' Prince as Regent of *Scotland*.'

Meſſages were at the ſame Time ſent to the principal Inhabitants and Citizens, to come and meet with the Council, and concert what was proper to be done; but few of them had come, when the Deputies returned with an Anſwer much to the ſame Purpoſe with the former; and ſoon after Notice was brought, that a Part of the Rebel Army had ruſhed in at the *Netherbow* Port, and made themſelves Maſters of the City-Guard, who had been ſo harraſſed with the extraordinary Duty all the preceding Week, and by being out under Arms for two Days before alongſt with the Dragoons, that they were hardly fit to do any Duty, far leſs able to oppoſe an Army of Rebels, who were numerous and hardy enough to defeat a regular diſciplined Body of the King's Forces a few Days after.

From the above Narrative, which is in every Particular ſtrictly agreeable to the Fact as it happened, it appears in what Manner this City had the Misfortune to fall into the Poſſeſſion of the Rebels, after all poſſible Care taken by the Provoſt, Magiſtrates and Council, to prevent it. Some of them indeed were of Opinion, as well as many others of the wiſeſt and beſt affected Citizens in the Town, that the Scheme of defending the City, againſt an Attack, was in itſelf impracticable. The old Walls are hardly ſufficient to keep out ſmuggled Goods, but by no Means able to endure any Siege or Attack: Beſides, there were ſo many other obvious Ways the Town might be forced to ſurrender, by throwing in Fire, burning

ing the Houſes which adjoin to the Town in ſome Places where there is no Wall, cutting the Water-Pipes, which would ſtarve the Town in a Day, &c. that a great many well affected Burgeſſes thought the beſt Thing could be done for the Service of the Government, was to diſpoſe of any Thing that could be of Uſe to the Rebels, and leave the Gates of the City open.

But, though this was the Opinion of the Provoſt, as well as many of the Council and moſt ſubſtantial Citizens, yet, when the other Scheme was reſolved, the Provoſt exerted all the Vigilance he was capable of to make it effectual, as appears from the Circumſtances above related. He ſpent his whole Time in the publick Service, from Six o Clock in the Morning to Twelve at Night, ſometimes till Four next Morning, going about viewing the publick Works, giving Orders, adviſing Expedients, taking and deſiring to have the beſt Advice: And, at laſt, when the Thing came to the Puſh, he was aſhamed to ſee many, who had appeared keen for the Scheme in the Beginning, unwilling to carry it to the laſt Execution, and that, in general, the Inhabitants were ſo terrified by the frightful Notion they had got of the Rebels, that he could find no Concurrence to make an Oppoſition, and keep out the City, not even from thoſe who had firſt taken Arms in its Defence. He expreſſed his Sentiments in as ſtrong a Manner in Time of Danger, as the Proſecutors can now declaim at Eaſe, of the Reproach it would be to the City to be ſurrendred without Defence, after all the Preparations that had been made, and the Aſſurances they had gi-

ven his Majeſty to that Purpoſe; and declared himſelf ready to mount the Walls with the ſmalleſt Number of Men that could ſupport him: But the Terror they were in from the Cruelty of the Rebels, and the little Proſpect they had of making an effectual Defence, without farther Aſſiſtance than they had within the Town, prevailed over his Expoſtulations, and rendred his Deſign abortive, which he was willing to have proſecuted at the Hazard of his Life.

At the ſame Time it is obvious, that the Proſecutors ſet this Event in a very falſe Light, when they ſuppoſe, 'That the King's Army was within a Day's March of the City when it was taken by the Rebels, and that it was poſſible to have kept out the Town till the Army had come up to its Relief:' For it is a certain undiſputed Fact, that General *Cope*'s Army was ſtill on Ship-Board when the Rebels took Poſſeſſion of the City, and very uncertain when they would diſembark; and that, after all the Haſte they could poſſibly make to approach the City, they could not get within Six Miles of it ſooner than the *Friday* Evening, near *four Days* after the City was taken: Even the Purſuers do not maintain that the City could by any Defence have been kept out the Half of that Time. In Fact, it is certain it could not have been kept out many Hours. And therefore, take the Caſe in any View, it is highly unjuſt to lay the Blame of the bad Conſequences, which afterwards followed upon an Event which appears, in the Nature of Things, to have been unavoidable, as Circumſtances

Palaces their Food, and are admitted on all Hands.

It is not properly the Pannel's Buſineſs to make an Anſwer to the Purſuer's Declamation upon the Conſequences of this Event, which, were they founded, could not affect him who did the utmoſt in his Power to prevent them. But the Exaggerations are too obvious to take with the moſt credulous. It will never go down with any Body, that the Victory obtained by the Rebels at *Preſtonpans* was owing to the *Tents* or Furniture they got out of the City *three Weeks* after it was fought, or to the broken Guns that were dropt by the Burghers, when it is notorious that greater Numbers of the Rebels came armed to *Edinburgh* than were engaged in that Action. None of the broad Swords, which were the Inſtruments of the Miſchief done on that Day, were found in *Edinburgh*. Every one who conſiders the Matter coolly, will own that the Caſe muſt have been the ſame, had they met with Sir *John Cope*'s Army the Day before they came to *Edinburgh*, as three Days after it. All depended on the Conduct and Behaviour of the two Armies; and this City behoved in Courſe to fall to the Victor.

Were Conjectures of this Nature to be indulged, it would be more juſt to impute the taking of this City to General *Cope*'s not having guarded the Paſſes on the *Forth*, or fought the Rebels when they were in the North in much ſmaller Numbers; by either of which their Progreſs would have been ſtopt from coming Southwards. But, to ſuppoſe that a Town, which, without any Siege, could be laid in Aſhes by any Enemy from

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without in a few Hours, ſhould be able to put a Stop to the Progreſs of a Rebellion, which was ſtrong enough to ſtand a pitched Battle againſt the whole Forces in this Part of the united Kingdom, and defeat them, is a Stretch of Imagination on too wild to be liſtned to even by the Vulgar, far leſs to be inſiſted on before any Court.

It was however the Misfortune of the Pannel, after all his Pains, Labour and Diligence, and the Hazards he was ready to undergo, to be attacked by Suſpicions, as if he had failed in his Duty. To this ſeveral different Cauſes contributed, which frequently ariſe on ſuch Occaſions. In extraordinary Emergents of this Kind, *Zeal* in ſome, and *Fear* in others, never miſs to ſet various Paſſions a-working. A *third* Source occurred not ſo *blameleſs* as either of the other two. When the Accounts firſt came of a Rebellion ſtirring in the Northern Parts, the Approach of the annual Elections, and Steps thereto preparative, was what chiefly employed the Thoughts of the Inhabitants of this Town. The Danger then was diſtant, and it was hoped would approach no nearer: But it was a good Opportunity for ſuch as looked with an envious Eye upon the preſent Magiſtracy, as having been too long in Poſſeſſion of the good Opinion of the People, to undermine them, by working upon the Fears and Credulity of others. Surmiſes and Jealouſies are eaſily ſpread when People are under Terror: And, by propoſing contrary Schemes, they had a good Chance, either to bring the Magiſtrates into Diſrepute with the People, if they oppoſed them; or to load them with the Blame, if, when they yielded, the Exe-

cution

ction of them ſhould, as in all Probability it would, in the Event, prove impracticable.

By ſuch Attempts of the intereſted and deſigning, it can hardly fail that many of the honeſt and well-meaning will be led away, when their Fears and Jealouſies are ſo ſtrongly raiſed as to get the better of their Reaſon: And this was much increaſed by Reports artificially ſpread with the ſame View thro' the News Papers in different Parts of the Kingdom, of Facts now notoriouſly known to be falſe, but which were eaſy to gain Belief at a Time when Men's Minds were in a Ferment, jealous of the Conduct of one another, and ready to catch at every remoteſt Suſpicion.

Under theſe undeſervedly unlucky Circumſtances, the Pannel, conſcious of his Innocence, ſet out for *London* to attend his Duty in Parliament; and, as ſoon as he came there, wrote to one of his Majeſty's Principal Secretaries of State to acquaint him of his Arrival, and that, as he underſtood many ſcandalous Reports had been ſpread to his Diſadvantage, he was ready to wait on his Lordſhip, or any of his Majeſty's Miniſters, to give them Satisfaction with reſpect to his Conduct.

Two Days after he was taken into Cuſtody at his own Houſe, and carried to a Meſſenger's Houſe, where he remained for ſome Time. After that he underwent an Examination before the Cabinet Council, which laſted for ſeveral Hours, in which he gave full and particular Anſwers to every Queſtion that was asked him, and ſtrictly agreeable to the true State of the Fact as above ſet forth: But the malicious Reports of his Enemies had gained ſo much Ground, that he was

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after this ſent to the Tower, and kept a cloſe Priſoner for three Months. Thereafter, as the Credit of theſe Slanders, ſupported by no Evidence, began to abate, his Confinement was relaxed, but ſtill continued till the 23d of *January* 1747. when he was admitted to Bail before one of his Majeſty's Principal Secretaries of State, upon a Recognizance to the Extent of *Fifteen Thouſand Pounds Sterling*, to appear before his Majeſty's Court of Juſticiary at *Edinburgh*, at the firſt ſitting of the ſaid Court after the 20th Day of *March* then next.

During his long Confinement he made many Applications, expreſſing his Willingneſs to meet his Trial; and, as ſoon as he was liberated and came down to *Scotland*, he applied to the High Court of Juſticiary at their firſt Meeting after the 20th of *March*; and now, at the Diſtance of above *a Year and a Half* from his firſt Confinement, he has been at laſt ſerved with a Libel at the Inſtance of his Majeſty's Advocate; and, upon the 13th inſtant, Council on both Sides were heard before the Court upon the Relevancy of the Libel, and the Court has been pleaſed to order Informations to be given in.

The Council for the Pannel, in Anſwer to this Libel, after ſetting forth the ſeveral Steps of the Pannel's Conduct, and his Care, Diligence and Activity in the Diſcharge of his Office, as above repreſented, did, in the *firſt* Place, obſerve, That although a Proſecution of this Kind againſt a Magiſtrate, not for any criminal Fact alledged to be committed, but for ſuppoſed Neglects, Miſtakes, or Errors in the Execution of his Office, is pretty new and extraordinary, and, it is believed, will

hardly

hardly meet with any Precedent before a Court of Justice; yet the Pannel would not decline the Jurisdiction of the Court in any Trial that can be brought; he is sure his Conduct will stand the strictest Test of Inquiry; and therefore was willing chearfully to submit the Case to the Judgment of the Court.

At the same Time it was observed, That, after all the Pains that had been taken to find Fault with the Pannel, and to lay upon him the Load of the Misfortunes which befel the City of *Edinburgh* during the late Rebellion; yet it is very remarkable, That now, when the Libel appears, drawn out with the greatest Art and Skill for that Purpose, it does not contain any one Fact that is in itself criminal. And even the Omissions, charged upon the Pannel, are such as are either merely trifling, or at least of a very doubtful ambiguous Nature, and such as his Conduct would have been equally liable to be misconstructed, had he followed the opposite Course, or done the Reverse of what he is charged with in the Libel.

That, if such are supposed to be relevant Grounds of Accusation against a Magistrate, his Situation must be very singularly unhappy, especially when Times of Danger and Difficulty occur: The Office he cannot decline to accept of, he can as little decline to act: He cannot stop, but must determine himself one Way or other; and, after he has honestly determined, and acted to the best of his Judgment, if he is liable, upon the Event's turning out unsuccessful, to be tried as a Criminal, why he did not take a different Course, it is impossible for any Man, who has the Misfor-

tune

time to be placed in ſuch Circumſtances, let him take what Courſe he will, to avoid Puniſhment. And this is the more applicable to the preſent Caſe, that,

2*do.* This Libel does not charge the Pannel with any Diſaffection to his Majeſty, or our preſent happy Eſtabliſhment, far leſs does it offer to prove any Fact that can infer it; nor is it alledged that any of the Articles charged in the Libel happened *ex propoſito*, or *ex malo animo*. The natural Preſumption therefore lies for Innocence, when the Facts are ſuch as can admit of that Conſtruction. In this Caſe the Preſumption is confirmed from the whole Tenor of the Pannel's Conduct in his paſt Life, as well as from his Situation in the World. As he is a Gentleman of a pretty conſiderable Property in this Country, and who deals in Trade to a very large Extent, it cannot be ſuppoſed he would wiſh to ſee Confuſions ariſe in his Country, or the Laws to be put to Silence by lawleſs Force. That ſuch Diſorders muſt in every Event affect him deeply, by ruining his Debtors, and hurting his Intereſt in many different Reſpects; and therefore, unleſs he were ſuppoſed to be deſtitute of common Senſe, there can ly no Probability that he would wilfully do any Thing that ſhould tend to increaſe ſuch Diſorders, highly miſchievous to himſelf, as well as to his Country.

And, 3*tio.* it was in general obſerved, That, in the preſent Caſe, the Pannel had not the ſole Direction of any one of the Articles referred to in the Libel: That, as Lord Provoſt of this City, he was only the Head of a numerous Body

of

of Magiſtrates and Town-Council, and behoved to act by their Direction. That, by his Majeſty's Sign-Manual, the Direction of the City-Regiment was alſo expreſly given to the *Lord Provoſt, Magiſtrates and Town-Council* of *Edinburgh*; that accordingly the Town-Council did forthwith take the Direction into their Hands, and named a Committee, which was to meet twice a Day, to conſider and order what was proper to be done for the Safety of the City and Support of the Government; and tho' the Provoſt was named Colonel of the Regiment, yet, by his Nomination, he was limited to conduct and direct them in ſuch Manner as the Council ſhould think proper.

That the Pannel did accordingly act in every Particular by the Direction and Concurrence of the Council, and the Committee by them named; that no Inſtance can be given where he oppoſed their Reſolutions and Orders, or followed his own Will or Judgment in Oppoſition to theirs; and in ſuch Circumſtances it ſeems impoſſible to aſſign a Reaſon why a Charge of Guilt ſhould be fixed upon the Pannel, when the Council, by whoſe Direction he acted, are admitted to be innocent, and to have all along behaved dutifully to his Majeſty and his Government.

And, more particularly, with reſpect to the ſeveral Articles of the Libel, it was inſiſted, That, neither ſeparately nor jointly, can they amount to the Charge of a Crime againſt the Pannel.

The *firſt* Article begins with ſetting forth, 'That he did nothing of his own Accord to-'wards providing for Defence of the City.' But it is evident this, if true, could be no Point of

Dittay. Had the Pannel been of Opinion that it was not expedient for the Service of the Government to attempt a Defence of the City, which was the Opinion of many well affected Councillors and Citizens, or if he had been of the contrary Opinion, but every Thing he could ſuggeſt for its Defence ſhould happen to be propoſed by ſome other Member of the Council or Committee, in either of theſe Caſes the Propoſition here alledged might have been true, and yet the Pannel intirely blameleſs: At the ſame Time, that nothing can be more contrary to Truth, evidently appears from Numbers of Inſtances in the above Narrative, where the Pannel, of his own Motion and Accord, ſuggeſted and executed many Expedients of great Importance, towards providing effectually for the Safety of the Town.

And as to the ſecond Branch of this Article, 'That the Pannel ſtirred affected Doubts concerning the Legality of the Propoſition for raiſing 'the City-Regiment,' which Doubts the Purſuer, in his Information, endeavours to remove, by obſerving, 'That the Act 1661. upon which they 'were founded, is repealed by the Act *7mo Annæ*, which provides, That nothing thereafter ſhall 'be High Treaſon in *Scotland*, but what is ſuch 'by the Law of *England*.'

It is anſwered, That the Doubt upon this Point is not ſingly founded upon the Statute 1661. but upon the common Law, by which the Power of Arms is one of the King's undoubted Prerogatives, and the incroaching upon it has been declared highly criminal, by Statutes anterior to the 1661. particularly by the Act 75th, Parl. 1563, which

which forbids any Perſon, of whatſoever Quality, Eſtate, Condition or Degree, to raiſe Men in Arms without *ſpecial Licence*, in *Writ*, had from the Crown, under the *Pain* of *Death*. This Act has never been repealed by any ſubſequent Law, either expreſly or by Implication; and it makes no Exception of Magiſtrates of Burghs, but extends to all Subjects of whatever Condition or Degree, nor of raiſing Men upon Pretence of the King's Service. It is well known no ſuch Exception was intended to be implied, either in this Statute, or the after Laws made in the Reign of *Charles* II. for the Diſturbances which happened in thoſe Times, and which theſe Laws were intended to prevent, were frequently occaſioned by raiſing Men upon ſuch Pretences.

But it is unneceſſary for the Pannel to enlarge on this Argument. Were a Doubt, in any Caſe, to be conſtructed as a Crime, for which, it is believed, no Precedent can be alledged, the Pannel muſt be fully juſtified in this Caſe, by the Authority already mentioned, of the honourable Judges, and his Majeſty's Council, learned in the Law, who agreed in Opinion, that the levying this Regiment without his Majeſty's expreſs Warrant would be illegal.

And it is ſtill as extraordinary, that it ſhould be made a Point of Dittay in the *ſecond* Article, That Objections were made to the Legality of the Aſſociation of the Volunteers: They were aſſociated in Arms for the preciſe ſame Purpoſes for which the Regiment was to be raiſed, *viz.* for the Defence of the City and Support of the Government: And the Council for the Pannel muſt confeſs

ſeſs they cannot obſerve any ſolid Diſtinction that ſhould make the one legal when the other is illegal and blameable: And therefore it is ſomewhat ſurpriſing it ſhould be laid as a Crime againſt the Pannel, that he did not at firſt View diſcover ſuch Diſtinction, eſpecially as he acquieſced inſtantly in the Opinion he got upon that Point, and, without the Delay of a Moment, proceeded to authorize the Volunteers to go on in their Aſſociation.

This ſhews that the Pannel had no *Reluctancy* or *Averſion* to this Meaſure, as the Libel would ſuppoſe. He took the very firſt Opportunity to inform himſelf of the Legality of it, and chearfully followed the Information he got. Had he demurred a little more, upon a Diſtinction by no Means obvious, he could not have been liable to Blame, far leſs to Puniſhment. And it is unneceſſary to enlarge upon the reſt of this Article, which the Purſuer, in his Information, does not inſiſt upon, as indeed it is apparently too trifling to enter into a criminal Libel.

As to the *third* Article, concerning the Repair of the City-Walls, it has already appeared, from the Record of the Council, that the Direction of theſe Repairs was intruſted to a Committee under Bailie *Robert Baillie*; that they were often enjoined, from Time to Time, to carry on the Works with the utmoſt Diſpatch; that the Provoſt frequently viſited the Works; and, whenever it appeared there was any Want of Workmen, he always granted new Warrants to impreſs them. The Ditch at *Wallace*'s Tower, which Mr. *Mac Laurin* complains, that, after being carried on right for ſome Time, was,

was, by Miſtake or bad Advice, caſt on the wrong Side of the Dyke, was owing to a Direction given by Bailie *Gavin Hamilton*, who altered the Orders given by Mr. *Baillie* the Overſeer, and, by Miſtake, cauſed caſt the Ditch upon the wrong Side of the Dyke: And the other Delay he complains, in not beginning the Communication he propoſed betwixt the Wall of the Town and the high Houſe without the *Potter-Row* Port, in due Time, was owing to an Objection made to the Propoſal, that ſuch Communication might very probably afford an Opportunity to the Rebels to enter the Town; upon which Mr. *MacLaurin* himſelf, at that Time, agreed it was fit to drop it. And as to all the other Works, even by Mr. *MacLaurin*'s Account, which the Purſuer refers to in his Information, it appears they were carried on in due Time; for he admits they were almoſt finiſhed on *Monday* Afternoon, when they were told of the Meeting of the Inhabitants in the New Church.

And as to the Complaint of the Neglect in providing Gunners, and giving Orders to load the Cannon, the Lords have already been informed of the Pannel's Diligence, in conveening Men to aſſiſt at mounting them on the Walls, and ſending every where to provide Gunners, and ordering Matches in due Time to light them. They were loaded when the Rebels were at ſix Miles Diſtance from the Town, which was rather too early, as it is well known that Cannon do not ſerve ſo well after they have been long loaded.

But then, what Relevancy is there in all this, ſuppoſing the Facts true as laid in the Libel? Is

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it poſſible to plead that the Provoſt ſhould be anſwerable for the Execution of Works, which, by the Council, appear to have been committed to another Committee under a proper Overſeer? Or will it be laid as a Charge againſt him, that he did not think the Sailors proper Perſons to be employed as Gunners, if other Gunners could be had elſewhere? Or that he did not give Orders to load the Cannon on *Sunday* Morning, when it is allowed they were loaded that Evening, and too ſoon for any Uſe that could poſſibly be made of them againſt the Rebels?

The *ſalutary* Propoſition which the *fourth* Article charges the Provoſt with rejecting, will appear to every one, who coolly conſiders it, a moſt *pernicious* one. To make Diſtinctions among the Inhabitants, from Surmiſes their Enemies might throw out againſt them without any Ground, when their Minds are heated and divided into Factions, might contribute to ſet them by the Ears together, but never to unite or ſtrengthen their Hands in the Defence of the City, or Service of the Government. The Purſuer's Information ſays, that the Anſwer given to this Propoſal was, that the Town's Arms ſhould be put into the Hands of the *moſt ſubſtantial Burghers*. This Anſwer, if given, was ſolid and judicious: Men of Subſtance and Property are the fitteſt to be intruſted with the Defence of the Laws on which the Preſervation of their Properties depends: And it is truly ſurpriſing that the Libel, upon this Article, ſhould prefer to this a Scheme of arming a Number of Tradeſmens Servants, who were to be allured to come into this Service by the Bait of a Guinea

to be given to each of them; which is ſtated as another *ſalutary* Propoſal offered to the Provoſt at this Time. Such Propoſals could only proceed from wrong-headed or *ſiniſter* Views. Had the Provoſt intruſted the City-Arms to ſuch low People, whoſe Principles could not be known, and denied them to the moſt ſubſtantial Burghers, whoſe Intereſt was principally concerned in Defence of the Town, he might juſtly have been charged with the Blame of the Conſequences: And therefore it is hardly neceſſary to obſerve, that, were there any Colour of Relevancy in this Article, it could not affect the Pannel, as it is not pretended that the Propoſers ever laid it before the Council, who were the proper Judges; and their not doing ſo is *real Evidence* that they were ſatisfied of the Unfitneſs of the Scheme, from the Objections that obviouſly occurred againſt it.

The *fifth* Article charges the Pannel with a *cold Reception* given to Sir *Robert Dickſon*, and a *Propoſal* made to him, that his Volunteers ſhould inliſt in the *Edinburgh* Regiment. The firſt is a very extraordinary Article in a criminal Libel, and the Pannel believes will be found not to be true. The other ſhews the great Anxiety of the Purſuer to find Fault with the Pannel, let him hold what Conduct he will. Had he neglected theſe Volunteers, and refuſed them Meat or Pay, he might juſtly have been found liable to Blame; but that cannot be ſaid: He took Care to provide them with *Victuals* aſſoon as they arrived; and the Handle taken to charge him is, that he alſo offered them *Pay*. It is not ſaid that he inſiſted any ſhould inliſt that did not incline, or

that

that he refuſed to accept the Services of ſuch as were diſpoſed to aſſiſt the Town without Pay: But, that Pay ſhould at all be propoſed to thoſe Volunteers, or inliſting in the City Regiment, though it was raiſed for the very ſame Purpoſe they profeſſed to come for, *viz.* the Defence of the City, and were to be diſmiſſed aſſoon as that End was attained; this is the Charge: And it is ſubmitted, whether there was the leaſt Colour to make this an Article in a criminal Accuſation.

The Fact as to *Andrew Alves*'s Meſſage has been already explained. The receiving it could be no Crime in the Pannel: He could not avoid it unleſs he had ſhut his Ears before he knew what Mr. *Alves* was to tell him; and the Meaſure he took upon it was in conſequence of the Advice of Gentlemen of the Council, who thought it the moſt prudent Way to take no Notice of any Thing that might diſſpirit the Inhabitants at that Juncture. The Ground of the Accuſation is, That he did not *immediately* commit Mr. *Alves*: And if he had immediately committed him, which was the likelieſt Way to ſpread the Meſſage through the Town, he might with better Reaſon have been accuſed, that he had done it of Purpoſe to intimidate the Inhabitants: So this *Article*, like moſt others in this Libel, turns ſtronger when it is *inverted*. If ſuch Accuſations are allowed againſt a Magiſtrate, he is in a bad Situation: For act he muſt; and whether he take the one Courſe or the other, he is ſure to be brought to the Bar as a Criminal.

The *ſeventh* and *eighth* Articles charge the Pannel with receiving a Petition from the Inhabitants, keep-

keeping a Meeting with them, and hearing a Letter read from the Pretender's Son. The receiving the Petition was unavoidable, unleſs he had ſhut himſelf up in a Cloſet, and then he might have been juſtly blamed for keeping out of the Way in Time of publick Danger. As little could the calling of a Meeting of the Inhabitants, at ſuch a Juncture, have been faulty or blameable: But it has been already obſerved, he called no Meeting; but the Inhabitants, under Terror of the approaching Danger, preſſed in upon him wherever he went, and would have their Complaints and Remonſtrances heard, and the Pretender's Son's Letter read, after the Pannel had oppoſed it, and left their Company to avoid hearing it.

The Part the Provoſt acted at this Meeting, and the Pains he took to animate the Inhabitants to concur in Defence of the City, has been already ſtated, and, as it is notoriouſly known, muſt juſtify him, in the Eyes of all Mankind, againſt the Aſperſions now endeavoured to be thrown upon him: But then, taking the Articles as ſtated in the Libel, there is no Sort of Relevancy in them; neither the holding a Meeting of the Inhabitants, nor the ſuffering a Letter to be read from the Rebels, nor the ſending a Deputation to them, were they ſuppoſed the Acts of this Pannel, can be ſaid to be criminal in ſuch a Caſe. When Rebels are at the Gates, and have the Lives and Properties of the Inhabitants in their Power, the great Law of Neceſſity, which, in the Nature of Things, muſt make an Exception from every human Law, legitimates any Intercourſe that is neceſſary to ſave the Inhabitants from the threatned Deſtruction.

It is unneceſſary to enlarge upon this Argument; it is evident, not only from the Reaſon of the Thing, but the Hiſtories of all Countries in which Rebellions have ever been raiſed: It was never before pretended to be a Crime in the Subjects of any Country to treat with Rebels when their Lives were in their Power. The Laws forbidding Intercourſe with Rebels, can, from the Nature of the Thing, apply only to *voluntary Intercourſe*, and not to ſuch as is forced by *invincible Neceſſity*, when Subjects are deprived of the Protection of the Government, and not able to defend themſelves againſt a ſuperior lawleſs Force. Nay, in this very Rebellion, has it ever been conſidered as a Crime, in Gentlemen who were even in the immediate Service of his Majeſty, to treat with Rebels, or enter into Paroles or Engagements with them, when their Lives were in their Power? Has it been found criminal in Governors of Forts, which were built and intended for bearing Sieges, as the Town of *Edinburgh* never was, to enter into Capitulations with Rebels when they found it neceſſary? Was the Mayor of *Carliſle* tried as a Criminal for entring into an expreſs Capitulation with the Rebels, to ſurrender a City that is properly fortified, and might be preſumed to make a good Defence, or for making an expreſs Agreement to deliver up the Arms and Ammunition? Or was he tried for going, after the Surrender, as Mayor of the City, with the Sword and Mace before him, to attend the Proclamation of the Pretender? The Intercourſe this Mayor had with the Rebels was evidently of a much deeper Nature than any that is pretended to have been

been had by the Provoſt of *Edinburgh*? But yet ſo extenſive has been the Influence of the Miſrepreſentations of his Enemies, that he has for a Year and a Half ſuffered, and is now brought to Trial as a Criminal, while the other paſſes without Blame.

The other Circumſtance charged in this Article, with reſpect to the Pannel's refuſing to order the Dragoons to come into Town, has been fully explained in ſtating the Fact, and it would be improper to trouble the Court with repeating it. He was deſirous of the Aſſiſtance of the Dragoons, had ſigned an Application for them alongſt with the Lord Advocate, had brought in Proviſions to Town for ſuſtaining their Horſes: He told the very Meſſenger referred to in this Article, that the Dragoons would be made extremely welcome, and that all the Force he had would be ready to join with them in Defence of the Town: He ordered the Conſtables to mount the Walls, to obſerve their Approach, that the Gates might be forthwith opened to admit them. And, after all this, will it be charged as a Crime upon him, that he ſcrupled to ſign an Order to Troops, over which he had no Power, ſingly by himſelf, which, after what had paſt, he could take in no other Light, but as intended to make him anſwerable for the Conſequences that might attend this Meaſure, and when he had been told the Night before, by Gentlemen of undoubted Skill and Loyalty to his Majeſty, that the Conſequence would probably be to ſhut up the Dragoons, and oblige them to ſurrender Priſoners to the Rebels?

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Great Reaſon has the Pannel to be thankful that he did not fall into the Snare the Purſuer here complains of him for avoiding, which might have turned out much heavier than all the Articles muſtered together in this Libel, and ſix Times as many more. Had the Dragoons been brought in upon his Order, and taken Priſoners, as the Gentlemen of the Military foretold, there would have been another Kind of Colour to argue, than from any Thing that has been yet ſuggeſted, that the Pannel had given Occaſion to the unlucky Defeat at *Preſton*, by ſhutting up the Dragoons, and depriving the other Troops of their Aſſiſtance, by which they might have been enabled to get the better of the Rebels.

Unhappy then muſt be the Situation of every Magiſtrate, if he is to be judged after this Meaſure. It is doubtful and difficult what Courſe ought to be taken. People of Skill are divided upon it. If the Magiſtrate take either the one or the other Side, by this Way of proceeding his *Fate* muſt depend upon the *Succeſs*: Nay, if he ſhall be yet more cautious, and decline to determine either, but leave it to others of more Skill and Judgment in theſe Matters, as the Pannel did in the preſent Caſe, ready to acquieſce and concur in whatever they ſhould determine, yet it ſeems he cannot avoid to be held as a Criminal: He had before given his Conſent to the bringing in thoſe Dragoons, and was at all Times ready to admit them, if it was thought proper to bring them; and yet he muſt be accuſed, becauſe he did not ſign an Order, ſubjecting himſelf to the Conſequences of a Meaſure which was judged,

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by People of the beſt Skill, to be dangerous and improper.

The *ninth* Article of this criminal Libel, charging the Pannel with neglecting to give Orders to the Volunteers, when they had been long ſtanding under Arms, has been already explained in Point of Fact: That, without applying for Orders, they thought fit to determine themſelves to give up their Arms, and throw up the Service; which is a full Evidence of their Judgment, that the Defence of the City was an impracticable Meaſure; and an Evidence of ſo much the greater Weight, as neither their Zeal in the Undertaking, nor their Courage in going through with it, had it been found practicable, can at all be called in queſtion.

But, *next*, as to the *Relevancy*, were the Fact ſuppoſed to be true, the Anſwer is too plain almoſt to be ſtated. The Volunteers, and not the Pannel, were to blame, in that they either took or executed ſuch Reſolution without Orders from the Council. If they had applied to the Pannel for Orders, as the Libel alledges, it was no Wonder, in the Situation Things then were, that they did not get an immediate Return. The Lords have obſerved in what Situation the Provoſt and Council were at that Time, ſurrounded by the Inhabitants, who were alarmed with terrible Accounts of the Rebels, and frightful Threatnings of which they dreaded the immediate Execution; the Provoſt endeavouring to animate and ſtir them up to the Defence of the Town, by all the Arguments he could uſe; the Inhabitants declining to hearken to any Defence; and new Accounts coming

coming every Moment, which made it uncertain what Reſolution to take. In ſuch Circumſtances it ought to have been no Surpriſe to the Volunteers, if they had been kept waiting Orders for a conſiderable Time; it was their Duty to have continued at their Alarm-Poſts, till Orders were ſent. And it cannot be laid as a Load upon the Provoſt or Council, that the Volunteers thought fit to take a contrary Courſe, and give up their Arms, without waiting the Reſolutions of the Council.

The *tenth* Article conſiſts of three Branches. The *firſt* is, The Refuſal of Orders to ſpike up the Cannon. As to which the Fact has been already fully ſtated, and it is obvious there is no Relevancy in it, when it was equally eaſy for the General to cauſe nail them without any Orders from the Provoſt or Council. And it is not pretended that any Perſon he ſent was oppoſed in the Execution of it, but, on the contrary, the Town-Officers were ordered to ſhew them where the Cannon were, and the Serjeant had actually begun to nail them, until he was ſtopt by a Meſſage from the General, after he had got the Account of Sir *John Cope*'s Arrival, as has been already obſerved.

The *ſecond* is, 'The Orders alledged to have 'been given to Captain *Dalziel* to keep Guard, 'on the 16th *September*, with one Third of the 'City-Guard, the uſual Compliment in peacable 'Times.' But neither is there any Relevancy in this, when your Lordſhips conſider the Circumſtances at the Time, as confeſſed on both Sides. The Volunteers had given up their Arms to the

Caſtle,

Caſtle, ſo had the Men who had been levied in the City-Regiment. No Proſpect of Defence of the Town, unleſs ſome Aſſiſtance ſhould come from without. In ſuch Circumſtances, it is a very odd Complaint, why was not this whole Company of 126 Men kept on Foot to fight the Army of the Rebels, which conſiſted of ſome Thouſands? It is plain the Whole or a Third was all the ſame in ſuch a Situation: And therefore it is unneceſſary to add, that the Guard had been ſo fatigued with the ſevere Duty they had undergone for ſome Days before, that the whole of them could not have been able to do Duty that Night, whatever Orders they had received.

The laſt Branch of this Article is, 'That the 'Pannel gave Orders to the Trained-Bands, who 'had been upon Guard at the ſeveral Gates of 'the City, to quit their Poſts, and diſpoſe of 'of their Arms in ſuch Places where they muſt be 'expoſed to fall into the Hands of the Rebels.' This Article is too ambiguouſly laid to be admitted in a criminal Libel: The Crime is to be inferred from the Places where the Arms were to be left, and yet thoſe Places are not condeſcended on. This is directly inconſiſtent with the Nature of all criminal Procedure, which requires that the Libel be laid clear and unambiguous, ſo as the Pannel may know every Circumſtance of the Fact he is called to anſwer, and be prepared either to exculpate himſelf, or elide it by a contrary Proof.

But, 2*dly*. it is not conceivable what the Libel can mean, by ſpeaking of Places where Arms would be expoſed to fall into the Hands of the

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Rebels when they ſhould become Maſters of the City. It is evident, in that Caſe, in whatever Place of the City Arms were laid, they muſt be alike liable to fall into their Hands; an Order, under Pain of military Execution, would in a few Hours bring in all the Arms that were in any Town they became Maſters of, in whoſe-ever Poſſeſſion they were: And therefore the Libel, as to this Article, is not ſo conceived as to receive any diſtinct Meaning, or to admit of a proper Anſwer.

The *eleventh* Article ſets forth, 'That it was 'propoſed and urged in Council, that the whole 'City-Arms ſhould be lodged and ſecured with-'in the Caſtle of *Edinburgh*, in order to prevent 'their falling into the Hands of the Rebels; but 'the Pannel refuſed or declined to give any Or-'der for that Purpoſe; neither in Fact were 'the City-Arms ſo lodged and ſecured, but were 'ſeized by the Rebels upon their entring the 'City the Day following.'

But this Propoſal, ſaid to have been made in Council with reſpect to the Arms, is intirely *new*; and it is ſomewhat ſtrange it ſhould be ſo, if truly made, as theſe Matters have been ſo much the *Subject* of *Converſation* for almoſt two Years paſt; nor can the Pannel recal any ſuch Propoſal to his Remembrance.

The true State of the Fact, with reſpect to the Burghers Arms, has been already laid before the Court: That the Provoſt did all that was in his Power to keep thoſe Arms, though of very little Value, out of the Hands of the Rebels: That he ſent a Meſſage to the Generals in the Caſtle, to ſend a Party to take them out of the Hands of

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the Inhabitants; as the Council could not, for the Reaſons already mentioned, compel them to deliver them up to the Caſtle: And it will alſo be proved, if any Proof is to be brought in this Caſe, that when the Provoſt was giving Directions to the Trained-Bands, he told them, that if the Rebels approached to the Place, he hoped they would do their Duty, and behave like Men in Defence of the City; and if the Rebels ſhould prevail, he expected that, at any Rate, they would take Care to ſecrete their Arms, that they might not fall into their Hands.

But, abſtracting from theſe Facts, the Pannel is adviſed, that there is no Relevancy in this Article of the Libel: For, *firſt*, it is ſaid, that the Propoſal was made in the Town-Council, and it is not alledged, or pretended, that the Council approved of the Propoſal, or authorized the Pannel to grant the Order; and, if they did not, it was the Council, and not the Pannel, who declined to concur in this Meaſure; eſpecially as the Pannel had truly no Right to diſpoſe of the Arms, or to ſend them off without the Liberties of the Town, without Authority of the Council. It is a very new Ground of Accuſation againſt the Preſes of a Meeting, that, when a Propoſal was made to the Meeting, and either rejected, or not approved of by them, he was guilty of a Crime, becauſe he did not over-rule the Reſolutions of the Meeting, of which he was but one Member, and act beyond or contrary to the Directions they thought fit to give him in a Matter over which he had no Power to controul them: It is believed it will be difficult to find any Inſtance, where an

Omiſſion of this Nature has been made the Foundation of a criminal Charge.

But, in the *next* Place, when the Circumſtances of the Caſe are conſidered, which are notorious to all the World, and confirmed by the Production made by the Purſuer in this Caſe, every Mortal muſt ſee why the Council could not grant or authorize ſuch Order as is here mentioned, had it at that Time been ſuggeſted or propoſed. Repeated Threatnings had been ſent from the Rebels to the Town, by Writings which the Purſuer has produced, and given out with the Libel; a like threatning verbal Meſſage was ſent by Mr. *Alves*, all tending to the ſame Import, That, if the Town ſhould ſend off the Arms or Ammunition in their their Poſſeſſion, they ſhould be treated in the ſevereſt Manner, and ſuffer all Kind of military Execution. The Inhabitants had no Means to defend themſelves from the Execution of theſe Threats: And was it to be expected, that, when the Rebels were at the Gates, and the Dagger in Effect at their Throats, they would expoſe themſelves to it for the Sake of preſerving Arms of whatever Conſequence, much leſs ſo inſignificant as theſe Burgher-Arms are known to have been in this Caſe?

It is eaſy for People at Eaſe and in Security to talk of ſuch Diſtreſſes without much Concern; but let them put themſelves in the Caſe of thoſe they are to judge of, and then ſay, whether it is agreeable to the Nature of Mankind, to expoſe themſelves, and all that is near and dear to them in the World, to ſuch Sufferings, upon any Conſideration whatſoever; whether is it to be expected

ted of them; and whether they ought to be puniſhed for not having done it.

We are not now to judge of the Terror of the Rebels from what they afterwards did, but from the Impreſſions People were then under of the Diſtreſſes they might ſuffer from them: It is well known never Enemy was received with greater Dread, or painted out in ſtronger Colours of Cruelty and Barbarity: From the News-Papers, from the Pulpits, from all the beſt Accounts, nothing was to be expected from them but what was fierce, ſavage, and inhuman. Theſe Things had their good Effects, and perhaps were ſometimes a little exaggerated from well-meaning Motives: They tended to create in Mens Minds a great Abhorrence to the Rebels and their Cauſe; but then, at the ſame Time, they raiſed an immenſe Terror, ſuch as ſtruck every City in the Nation, to which they approached, with the utmoſt *Panick* and *Conſternation*.

The *black Friday* is not yet out of Remembrance, and the Impreſſion the Approach of the Rebels then made, when they were removed from the greateſt City in the Iſland, at the Diſtance of more *Days* March than they were of *Hours* or *Quarters* from this Town, at the Period now in queſtion. Let it be ſuppoſed, that the Rebel Army had been marching down from *Highgate-Hill*, or had been at *Weſt-Smithfield*, and had ſent in ſuch threatning Maſſages to the Lord Mayor, if he had no Army at Hand to defend the City, and had found no Diſpoſition in the Inhabitants to defend it, would he have adventured to deſpiſe the Threatning, or to ſend

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up the Citizens Arms to the Tower, by which their Lives and Properties muſt be expoſed to the lawleſs Fury and Barbarity of the Rebels? Or would he have been brought to the Bar as a Criminal, becauſe he had been *careful* of the *Blood* of the *Inhabitants*, (an Expreſſion that is laid againſt the Pannel in the preſent Caſe) and becauſe he had not expoſed their Subſtance to Plunder, and themſelves and their Families to Maſſacre?

The Diſproportion is indeed great betwixt the Inſtance put, and that which is the Subject of the preſent Queſtion; but both muſt be governed by the ſame Rules. Every Man's *Life* and his *All* is equally dear to him; and it does not depend upon the Greatneſs or Smallneſs of a City, whether it is lawful for the Governors to expoſe it to the Hazard of being deſtroyed, but upon the Circumſtances it is under at the Time, and the Proſpect of Relief from the impending Danger, of which there was none in the preſent Caſe.

And, with great Submiſſion, where is the Foundation of the Doctrine now pled for the Purſuer, in the Law, or in the Cuſtom of any known Country in the World? When was it heard of, that, upon a Town or a Fort being obliged to ſurrender, whether to Enemies or to Rebels, the Garriſon or the Inhabitants were bound to expoſe themſelves to the utmoſt Reſentment of the Enemy, for the Sake of keeping their Arms out of their Hands? Has it at any Time been brought as a Charge againſt the Governor of a Place, that he gave up the Arms to the Enemy, when he could not keep out the Place? Were not Arms

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and Ammunition given up at *Carliſle*, and at every other Fort that has been delivered up to the Rebels, either in this or any other Rebellion? And is there any Inſtance where that has before been made an Article of Accuſation?

It is no Anſwer, That, where there is no ſeparate Caſtle or Citadel, or where that is given up at the ſame Time with the Town, the Arms muſt fall in conſequence, as there is no Place in which they can be preſerved: For the Pannel is not charged here for the Loſs of the Arms, but for this, that they fell into the Hands of the Rebels. And it is well known it is in every Man's Power to break his Gun, and make it uſeleſs to the Enemy, whether he has a Caſtle to carry it to or not. And therefore, were there any Pretence for the Charge brought in this Caſe, it muſt equally affect the Commanders of *Carliſle*, and every Fort that has at any Time been given up to Rebels, why they did not at all Hazards deſtroy their Arms, that they might be of no Uſe to the Rebels. But, if ſuch an Objection was never heard of till this Libel appeared, it is a Demonſtration that the Libel in this Article is without Foundation.

And therefore it is the leſs neceſſary to obſerve, that, in the preſent Caſe, had it been the Duty of the Magiſtrates or Council, to order the Burgheſs Arms up to the Caſtle, let the Conſequence be what it would to the Inhabitants, it is obvious it was not in their Power to make their Orders effectual. What Force had they to compel the Inhabitants to a Scheme ſo deſtructive to themſelves? The Volunteers had already diſarmed them-

themſelves, and ſo could be of no Uſe for that Purpoſe; the City Regiment had alſo given up their Arms to the Caſtle; the Trained-Bands were the Burgeſſes themſelves, who had their Wives, their Families, and moſt of them the Bulk of their Properties in Town, which they were quite averſe to expoſe to Deſtruction by ſuch a Meaſure. And the only Force the Magiſtrates had to compel them, was the Company of the Town-Guard, who, if they had been diſpoſed to obey at ſuch a Juncture, could very ſoon have been tied Neck and Heel by one hundredth Part of the Inhabitants.

And, *3dly*. it is proper to conſider, in this Caſe, the Uncertainty of the Situation to which the Magiſtrates and Council were reduced, during the laſt and moſt diſtreſſing Scene of this unlucky Affair; ſometime terrified with the immediate Approach of the Rebels, at other Times encouraged with ſome Proſpect of Relief. Even, towards the End of this Period, there were ſome Hopes of the Return of the Dragoons; Mr. *Drummond* and Mr. *Groſet* had gone in Queſt of them: Nor was that Expectation quite over in the Meeting of the Council, until they heard the Rebels had entred the Town. Had the Dragoons returned to the City, and animated the People in its Defence, the *Charge* againſt the Pannel then would have been *inverted*. Why did he ſend up the Arms to the Caſtle? Why did he carry them out of the Way when they might be inſtantly wanted for Defence of the Town? And the near Approach of the Rebels made a Moment's Delay of great Conſequence; and the Citation might have been

been adduced, which is miſapplied in the preſent Caſe, *Quòd puncto ſæpe temporis maximarum rerum occaſiones amittuntur.*

Such was the unlucky Situation of the Governors of this City at that Time, that it would appear, by what has ſince happened, it was impoſſible they could eſcape Accuſation; the *Event* muſt make them criminal, however well-intentioned their *Conduct* might be: But their Anſwer is good, That no Law, no Cuſtom, requires the Inhabitants of any Place to expoſe their Lives, the Honour of their Wives and Daughters, and all that they have dear to them in the World, to the Fury of an incenſed Enemy, in order to keep Arms out of their Poſſeſſion. The Law of Humanity forbids it. That, in this Caſe, had the Magiſtrates been ſo minded, it was not in their Power to compel the Inhabitants to comply with it: Beſides, that the vacillant and uncertain State in which Matters then ſtood, made it very doubtful whether it was proper to have done it or not; and, in doubtful Caſes, it is againſt common Juſtice to accuſe or puniſh becauſe of the after Event.

Theſe Anſwers would have been good to the Magiſtrates and Council, had they been brought to the Bar to anſwer for rejecting ſuch Propoſal as the Libel here ſuppoſes: They are all equally competent to the Provoſt, with this additional one, That he is only one Member of their Body, and cannot be accountable for omitting what the Council did not think proper to enjoin him, had they ever ſo much erred in their Judgment.

It would have ſounded very oddly in the Ears of the World, if the Generals in the Caſtle had

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been brought under Proſecution, becauſe they ſent to forbid the nailing of the Cannon, or becauſe they did not ſend a Party to ſeize the Burghers Arms upon the Meſſage already mentioned: It is believed the whole Nation would have been amazed at ſuch a Proſecution. And yet, with great Submiſſion, there is a Difference betwixt that and the preſent Caſe: The Generals run no Riſque by ſending Parties to execute any Thing of that Nature within the Town, as little did their Parties, or the Garriſon under their Charge: But the Danger to the Inhabitants, who were committed to the Care of the Magiſtrates, was but too apparent, as well as too imminent, to be deſpiſed by any Set of Men, who were as deſtitute of Defence and Relief as they were at that Time.

And the Pannel will be forgiven to ſay, that, if the whole Series of his Conduct, from the Beginning to the End of theſe Tranſactions, ſhall be conſidered, there will appear as little Reaſon to ſuſpect him of any bad Intention in this Caſe, as any other Subject within the Kingdom. The Court has already obſerved, that the Pannel, of his own Accord, ordered all the Ammunition that was in the Town's Magazine to be carried to the Caſtle ſome Days before the Rebels approached, and that he cauſed execute this Order ſo punctually, that it was neceſſary afterwards to ſend to the Caſtle for what was wanted for the Service of the Town. It has alſo appeared how averſe he was to bring Arms down from the Caſtle, when the Rebels were on their Approach to the City, unleſs he had the higheſt Probabili-

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ty that they were to be uſed in a proper Manner; and that accordingly he refuſed the Offer made by the Secretary at War, on the Part of the General, to ſend back the Arms which had been returned by the Volunteers and City Regiment, for this Reaſon, That he did not ſee a good Diſpoſition in the Inhabitants at the Time to defend the City; and therefore was afraid the Arms, if ſent, might poſſibly fall into the Rebels Hands. How unjuſt then would it be, after ſuch Evidence of the Pannel's ſincere and upright Diſpoſition in this Matter, to ſuſpect him of a bad Intention, becauſe he did not inforce an Order upon his Fellow-Citizens, which, if obeyed, might have involved them in Miſery and Ruin, and which it was not in his Power to compel them to obey, and which is ſtated by his Accuſers as propoſed to the Council, to which he was ſubject, and is not alledged to have been by them approved or authorized?

The *laſt* Article of this Libel is fully as extraordinary as any of the reſt, *viz.* 'That, by Occa-'ſion of the ſeveral Inſtances of Misbehaviour a-'bove recited, it came to be very notoriouſly 'known that he was highly faulty and negligent 'in the Execution of his Office, and to be far-'ther violently ſuſpected and believed, amongſt 'the faithful Subjects in that City, that he was 'ſecretly in the Intereſt of the Pretender, by rea-'ſon of the Uniformity of his Behaviour, diſco-'vering a conſtant Unwillingneſs or Backward-'neſs to provide for or heartily proſecute the 'Meaſures that were in a Manner forced upon 'him, in order to the Defence of that City; at a

'when, if he had obſerved a contrary Conduct, 'there was at leaſt a high Probability that the 'City might have been preſerved from falling in-'to the Hands of the Rebels.'

But it is hardly neceſſary to make any additional Anſwer to this Article, after what has been already obſerved. It is hoped it is apparent to the Court, that none of the Inſtances recited in this Libel, were they true, as moſt of them are not, could infer any Degree of Misbehaviour againſt the Pannel: That his Conduct, from the Beginning to the End of theſe Tranſactions, has been uniform in the faithful Execution of his Duty: And that, from firſt to laſt, he never ſhewed any Unwillingneſs or Backwardneſs to concur in any Meaſure that could tend to the Service of the Government, but contributed more to forward ſuch Meaſures, of his own free Motive and Accord, than can be pretended to have been done by any who may be pleaſed to entertain Suſpicions of him, or by all of them put together.

It cannot however eſcape Obſervation, that it is an *unuſual Article* in a criminal Libel, that a Pannel is *violently ſuſpected* by others to have been guilty. The *Suſpicion* of others can never infer Guilt, nor Evidence of Guilt, againſt any Man whatever, tho' the *ſiniſter Views*, which gave Riſe to thoſe affected Suſpicions, had not been ſo apparent as they are in the preſent Caſe.

And, with Submiſſion, it is no good Anſwer that is made to this in the Purſuer's Information, That altho' they ſhould have carried their Suſpicion too far, in believing the Pannel to have been in the ſecret Intereſt of the Pretender; 'yet ſtill their

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'entertaining ſuch Apprehenſion or Belief, is one 'Demonſtration, ſuppoſing that they had carried 'their Concluſion too far, that his Conduct was 'not ſuch as became a faithful, vigilant, and 'zealous Magiſtrate on that Occaſion:' For an Apprehenſion founded upon Suſpicions, at firſt raiſed from indirect Views, and thereafter artfully propagated, and more eaſily ſpread through the Ferment of Mens Minds, during the Times of Diſtraction, can never be either Demonſtration or Evidence of any Thing, other than the bad Origin from which they at firſt proceeded. Nor is it fair to lay any Streſs upon them at all, when it appears they have been carried the Length of falſe and injurious Concluſions; the ſame Diſpoſition which has been violent enough to carry them that Length, is to be preſumed at firſt to have given Riſe to them. The Pannel's Conduct ſpeaks for itſelf, and ſtands vouched by notorious Facts, which, independent of the Suſpicions either of the Wicked or of the Credulous, demonſtrate him to have acted a faithful Part in the Execution of his Office, vigilant and zealous for the Safety of the Town, and careful of the Welfare of its Inhabitants, of whom he had the Overſight in thoſe unlucky Times.

And it is truly ſurpriſing it ſhould be alledged, 'That if the Pannel had obſerved a contrary 'Conduct, there was high Probability that the 'City might have been preſerved from falling 'into the Hands of the Rebels, or that it fell into 'their Hands in a very ſtrange and ſuſpicious Man-'ner, on the Morning of the 17th *September* '1745.' When it is as plain as Sun-ſhine, from the

the Facts already ſet forth, and which are notoriouſly known to be true, that, without the Interpoſition of a Miracle, it was impoſſible, as Circumſtances then ſtood, that this Town could miſs to fall into the Hands of the Rebels upon the 17th *September* 1745. It is notorious, that the Dragoons, and all the military Force, had then left the Town; that the Volunteers, before that Time, had thought fit to give up their Arms to the Caſtle; that the *Edinburgh* Regiment, which was then hardly one Third full, and the Men only raiſed a few Days before, had alſo given up their Arms; that the Burghers, or Trained-Bands, declined to go up and expoſe their Lives in keeping out the Walls, when the Military had wholly deſerted them, and they had underſtood, by repeated Threatnings from the Rebels, that any Man that appeared in Arms would be put to Death. The Court has already heard the Pains which was taken by the Pannel to animate all theſe different Sets of Men in the Defence of the City, and the Succeſs: And when ſuch was the Caſe, where was there any *Probability* that the Town could ſtand out againſt an Army of Half the Number of the Rebels? Or where is there any Thing *ſtrange* or *ſuſpicious* in the Rebels becoming Maſters of the Town, when it was thus deſerted? Was the Pannel to go up, with as many of the Company of the Town-Guard as were able to ſtand, after the Fatigues they had undergone for two Days before, and make Head againſt this Body of Rebels? Or, if he had attempted it, would the Inhabitants have permitted the Town to have been ſtormed and ſacked, which behoved

behoved, in ſuch a Caſe, to happen in leſs than an Hour? It ſeems evident, that, in ſuch a Concurrence of Circumſtances, nothing could ſave the Town from being taken, unleſs it had pleaſed Providence to ſtrike the Rebels with ſuch Diſmay and Terror, as many were then unluckily ſtruck with, whoſe Duty it was to have oppoſed them.

The Purſuer is pleaſed to ask, 'Why did the 'Pannel adviſe with the Inhabitants? Why did 'he give Way to a general Meeting in the 'Church? Why did he not order them to keep 'within Doors? Why did he not adviſe with his 'Fellow-Magiſtrates and Councillors, or with 'the chief Officers of the Volunteers, and delibe-'rate with them upon the ſuppoſed Change of 'Circumſtances? And if, in ſuch Council, it 'had been debated and reſolved, by Plurality of 'Voices, to be impracticable or inexpedient to 'perſiſt any longer in the Meaſure of defending 'the City, that Reſolution might have juſtified 'or acquitted him; but that nothing of this Kind 'is alledged, and thereby he has taken the 'whole upon himſelf.'

But, with great Submiſſion, it is a little ſurpriſing theſe Queſtions ſhould be asked, after the Notoriety of the Facts already ſtated. It is certain Fact, nor is the contrary alledged in the Libel, that the Pannel acted in this whole Matter in Concurrence with his Fellow-Magiſtrates and Councillors: It cannot be ſaid, that, from the Beginning to the End of this Affair, he ever oppoſed or over-ruled them in any one Article. The Officers of the Volunteers were alſo conſulted with, and your Lordſhips have heard what Accounts they

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gave the Pannel of the Diſpoſition of their Men with reſpect to the Defence of the Town; and that, in conſequence of this Diſpoſition, their Arms were all given up ſoon after. The Pannel ordered the Inhabitants to keep within Doors, and cauſed the Drum to go round for that Purpoſe: But what Force had he to compel them? Numbers of Inſtances are to be found in Hiſtory, where conſiderable Garriſons have been forced by the Inhabitants to ſurrender a Town: And here it is made a Ground of Accuſation againſt the Pannel, that he was not able to overawe the Inhabitants of this populous City, when he had no other Aſſiſtance, either to defend the Town, or to keep them in Awe, but ſuch as had been taken a few Days before from among themſelves, and who were all equally impreſſed with the ſame Terror of the Rebels, and Belief of the Impracticability of making an effectual Defence.

It is apparent the Pannel did all that any Man could do in the like Situation: He tried to animate the People, ſent for the Civil Officers of the Crown for Advice, and, when he found they had withdrawn, which, whatever Gloſs the Purſuer may think fit to put upon it, is an Evidence of their Judgment, that the Town could not be defended, he ſent for the beſt Advice and Aſſiſtance he could get, and never parted with the Gentlemen of the Council, nor in any Thing controuled their Advice, until the End of the Tranſactions now in queſtion: And therefore, according even to the Doctrine laid down by the Purſuer, his Conduct falls to be juſtified; for it cannot be thought material, that there are no Minutes

ſutes of the Town-Council or Committee marked in the Record after the 13th or 14th of *September*. The two following Days were too much crowded with the many various and important Tranſactions above ſet forth, which ſucceeded one another every Moment, to take down Minutes regularly in Writing: But ſtill it is ſufficient for the Pannel to ſay, that it neither is nor can be pretended, that in any one Particular he controuled or over-ruled the Opinion of the Committee or the Council.

In order to give a greater Colour to the Charge againſt the Pannel in this Caſe, the Purſuer endeavours to repreſent the Office he was poſſeſſed of in this City, as ſuperior, and independent of the reſt of the Magiſtrates and Town-Council: That he is the High Sheriff, Colonel of the Trained-Bands, City-Guard, *&c.* and, in a Word, that the whole Government and Defence of the Town was ſolely devolved upon him. From which it is inferred, that he muſt be anſwerable for all Miſcarriages, as if there had been no other Magiſtrate or Authority in the Town but what was lodged in himſelf.

But the Pannel is at a Loſs to diſcover upon what Authority the Purſuer builds this abſolute Power he thinks fit to veſt in the Lord Provoſt of this City; for it does not ſeem to have any Foundation, either in the ancient Laws, or in the late Regulations laid down by his preſent Majeſty with reſpect to the Defence of the Town. By the common Law, as well as the Statutes relative to theſe Matters, the whole Magiſtrates are conſidered to have an equal Concern in the Govern-

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ment of the Burgh. So ſays the Statute, *Ja.* IV. *Parl.* 6. *cap.* 87. and *Ja.* VI. *Parl.* 18. *cap.* 17. which 'forbids all Perſons, of whatſoever Rank, 'to convocate or aſſemble themſelves without 'due Intimation to the Provoſt of Bailies of the 'Burgh, and their Licence obtained thereto: 'And ordains the Inhabitants of the Boroughs to 'aſſiſt and concur with the Magiſtrates and Offi-'ciars for ſettling the ſaid Tumults and Turbu-'lencies, and puniſhing the Authors thereof.' And, as far as the Pannel knows, the other Magiſtrates have a joint Right to concur with the Provoſt in every Thing relating to the Government of the Borough.

It is of no Moment to the preſent Queſtion, that the Provoſt is in Uſe to ſit on Trials as High Sheriff; for it is not alledged that he acted any Thing in that Capacity in the Matters now called in queſtion before the Court.

It is true, that, by the Act of Parliament eſtabliſhing the Company of the City-Guard, the Provoſt is appointed Captain of it; and he is alſo the Commander of the City Trained-Bands, as being the firſt Magiſtrate in the Town: But ſtill, in theſe Commands, he has no abſolute Power, but is ſubject to the Directions of the Council.

And ſo it was alſo regulated by the Sign-Manual granted by his Majeſty in *September* 1745. authorizing to levy this Regiment for the Defence of the City. It is appointed to be under the Direction of the Lord Provoſt, Magiſtrates and Town-Council of *Edinburgh*; and the Magiſtrates and Council did accordingly take the Direction of it into their Hands; and tho' they paid the Compli-

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ment to the Provoſt, to name him Colonel of the Regiment, yet it was in their Power to turn him out, and name another, when they thought fit; and the Nomination bears, That he was to conduct and direct the Regiment, and the Officers who ſhould be named to command under him, as the Council ſhould think proper; and therefore, in this military Capacity, he acted under the Direction of the Town-Council, from whom his Authority proceeded. It is humbly ſubmitted to the Court, how far it is at all congruous to ſingle him out in a Trial of this Kind, when it neither is nor can be alledged, that at any Time he ever varied from or oppoſed that Direction.

In the Information on the other Side it is obſerved, 'That Notice was taken by the Pannel's 'Council, that he was poſſeſſed of a very large 'Property, conſiſting of a Stock of Wines, at '*Leith*, but that it did not appear whether they 'intended to mention it as an Argument to e'vince the Pannel's Sincerity, in deſiring to keep 'the Rebels at a Diſtance, or as an Excuſe for 'his not oppoſing them with Vigour and Zeal, 'leſt he might be hurt in that Part of his Proper'ty.' And upon this ſome Inſinuations are thrown out that might have been ſpared.

But it was not eaſy to miſapprehend the Meaning of the Pannel's Council, in the Mention they made of the large Property he was poſſeſſed of in this Country, which was noways particularly referred to the Wines at *Leith*, which makes but a very ſmall Part of it, but principally to his *perſonal Eſtate*, and *Debts* due to him, to a great Extent, by many Gentlemen in the Country, which

could not fail to ſuffer conſiderably by ſuch a Convulſion as muſt happen when a Rebellion ariſes in a Country. This was overly mentioned by the Pannel's Council, as a Circumſtance that made it improbable, that any Gentleman of common Senſe, in this Situation, would deſerve the Cenſure thrown out in the Libel, of ſecretly abetting ſuch Diſorders; but the Pannel's Council gave no Handle for drawing the other Inference here inſinuated, which is ſo injurious to the Pannel's Conduct, and ſo diſagreeable to his Character. His Conduct ſtands in no Need of ſuch Excuſes; it will ſtand the Teſt: He has not ſhewn, by any Thing that has ever paſt in this Affair, that he put an Overvalue either upon his Life or his Property, when his Duty came in Competition. The Wines were of little Moment in reſpect of the other Riſques he behoved to undergo upon ſuch general Diſtreſs of his Country; and it is unjuſt to inſinuate any Suſpicion of ſuch low Motive, when it is apparent he has given no Occaſion for it from any Part of his Conduct, however ſtrictly and rigorouſly examined.

The Purſuer is pleaſed to argue, 'That the 'Facts here charged, if done *doloſo animo*, would 'have amounted to High-Treaſon; and therefore it is a great Lenity that the Pannel is only 'purſued for Misbehaviour; and Citations are 'brought from Sir *Matthew Hale*, to prove that 'the delivering up the King's Caſtles to his Enemies, through Treachery, Bribery, *&c.* is High-'Treaſon; and from *Ærodius*, to prove that Negligence in publick Officers may be ſeverely puniſhed.'

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But the Pannel has little Occaſion to trouble the Court with enlarging upon theſe Authorities, becauſe he cannot diſcover they have the leaſt Connexion with the preſent Caſe. He has no Occaſion to diſpute, that the delivering up the King's Forts to Enemies or Rebels is High-Treaſon; or that wilful Faults and Neglects in publick Officers may be puniſhed: But it is, nevertheleſs, equally true, that when a Fort is taken by a ſuperior Force, which could not be reſiſted, there is no Crime at all in the Caſe: Nay, in the very Page quoted in the Purſuer's Information from Sir *Matthew Hale*, *Vol.* I. *p.* 168. it is laid down as a Rule, That if a Subject ſhould ſwear Fealty to the King's Enemies, if it is done for Fear of his Life, and he returns as ſoon as he can to his Allegiance, he is not puniſhable. It is incumbent on the Purſuer to reconcile with this Authority that Part of the Charge which is ſo much inſiſted on in this Caſe, and to ſhew how the ſame Law that excuſes a direct Adherence to the King's Enemies, when compelled by Fear of Death, can puniſh the leaving Arms to fall into their Hands, when compelled by the ſame Terror; or can puniſh an Omiſſion to give an Order to abſtract them in ſuch Circumſtances, which is the Charge laid in this Libel.

The Pannel ſhall not diſpute, that it is a Lenity to proſecute for a lower Crime, when a higher is incurred; but he muſt be forgiven to think that does by no means apply to his Caſe, and that the Hardſhips he has ſuffered are of a pretty ſingular Nature: That, after having lived ſo long in the World with an irreproachable Character, and

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ſerved his Country in Parliament with an intire Reputation, remote from every ſiniſter View, and thereby deſerved the Eſteem of his Conſtituents, as a Mark of which they conferred on him the Office of chief Magiſtrate of this City: That, becauſe he had the Misfortune to ſee his Country involved in publick Confuſions before the End of his Adminiſtration, and the City irreſiſtibly overpowered by lawleſs Force, after all the Precautions he had taken to prevent it, the Malice of his Enemies ſhould have ſo far prevailed againſt him, as to bring him under a Suſpicion of Guilt, and ſubject him to the heavy Sufferings he has already undergone: And now, when after the ſtricteſt Scrutiny and Inquiſition into his Conduct for above 20 Months paſt, the Charge appears fully drawn out, the Bulk of it conſiſts of ſuppoſed Omiſſions, or Errors in Point of Conduct, which, if the contrary Steps had been taken, might have been equally found Fault with, as the Event turned out; and the two Articles upon which the chief Streſs is laid, when the Circumſtances of the Caſe are conſidered, do truly reſolve into no more but that he was not able to keep out the Town when all Aſſiſtance had deſerted him, nor to prevail with the Inhabitants to ſecrete their Arms, when they were under the immediate Terror of their Lives. Theſe Things he hopes will not be imputed to him as a Crime, but that he will be relieved from all farther Hardſhips by your Lordſhips Juſtice, in diſmiſſing the Libel as irrelevant, and aſſoilying him from this Proſecution.

In reſpect whereof, &c.

JAMES FERGUSON.

Upon the 31ſt *July* 1747. the Diet was adjourned till *Monday* the 3d *Auguſt* thereafter, and upon that Day the Diet was farther adjourned till *Thurſday* the ſixth of that Month.

Curia juſticiaria S. D. N. Regis, tenta in nova ſeſſionis domo burgi de Edinburgh, ſexto die menſis Auguſti 1747. *per nobilem & potentem principem Archibaldum ducem de Argyll juſticiarium generalem, & honorabiles viros magiſtros Alexandrum Fraſer de Stricben, Patricium Grant de Elchies, Carolum Areskine de Tinwald, & Hugonem Dalrymple de Drummore, commiſſionarios juſticiarii dict. S. D. N. Regis.*

Curia legitimè affirmata.

Intran.

Archibald Stewart of the City of *Edinburgh*, Merchant, and late Lord Provoſt of the ſaid City, Pannel,

Indicted and accuſed as in the former Sederunt.

The Lords, after arguing upon the Libel and Informations, pronounced the following Interlocutor. 'The Lords Juſtice-General, and Commiſſioners of Juſticiary, having conſidered the criminal Libel purſued at the Inſtance of *William Grant* of *Preſtongrange* Eſquire, his Majeſty's Advocate, for his Majeſty's Intereſt, againſt *Archibald Stewart* of the City of *Edinburgh*, Merchant, and late Lord Provoſt of the ſaid City, Pannel, with the foregoing Debate thereupon, they *find it relevant* to infer the Pains of Law, that the Pannel, at the Time and Place libelled, being then Lord Provoſt of the City of *Edinburgh*, *wilfully* neglected

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'to purſue, or *wilfully* oppoſed or obſtructed, 'when propoſed by others, ſuch Meaſures as 'were proper or neceſſary for the Defence of the 'City againſt the Rebels, in the Inſtances libel-'led, or ſo much of them as do amount to ſuch '*wilful* Neglect: *And find it relevant*, as aforeſaid, '*ſeparatim*, That the *Firelocks* and *Bayonets* be-'longing to the City, or the *Cannon* mounted 'on the City-Walls, fell into the Hands of the 'Rebels through the *wilful* Neglect of the ſaid 'Pannel: Or that he refuſed or declined to take 'proper Meaſures, when required or demanded, 'which were in his Power, for ſecuring or ren-'dring uſeleſs to the Rebels the ſaid Arms: *And* '*find relevant*, as aforeſaid, all ſuch Acts charged 'upon the Pannel by the Libel, which ſhall ap-'pear to have been unneceſſarily done by him, 'and which did manifeſtly tend to the preventing 'or weakning the Defence of the City, or the fa-'cilitating the Rebels getting Poſſeſſion thereof, 'or their ſeizing the Arms therein. *But allow* the 'Pannel to prove all Facts and Circumſtances al-'ledged in his Defence for eliding or alleviating 'the Crimes charged upon him as above found 'relevant: *And remit* the Pannel, with the Libel 'as found relevant, to the Knowledge of an As-'ſize.' *Signed*, ARGYLL. *I. P. D.*

Thereafter a Bill was preſented to the ſaid Lords for *William Grant* of *Preſtongrange* Eſquire, his Majeſty's Advocate, humbly ſhewing, that where he brought a criminal Libel, at his Inſtance, before their Lordſhips, againſt *Archibald Stewart* Eſq; late Lord Provoſt of *Edinburgh*, for the Crimes of Neglect of Duty and Misbehaviour

viour in Office, as more fully enumerate and mentioned in the criminal Libel raiſed, and now depending at his Inſtance againſt him thereanent, that the firſt Diet for the Provoſt's Compearance being ſome Time ago elapſed, and ſtanding by Adjournment fixed from former Diets to this Day; and *Walter Groſet*, Collector of the Cuſtoms at *Alloa*, a material Witneſs in this Cauſe, and tho' given out in the Liſt of Witneſſes, alongſt with others, to the ſaid *Archibald Stewart*, being not then returned from *London* to *Scotland*, tho' daily expected, was not cited, and conſequently no Execution given in againſt him to the Clerk of Court, whereby the Complainer would be prejudged for Want of his Evidence, unleſs their Lordſhips provided a Remedy: That the Fact was, Mr. *Groſet* was out of the Kingdom, at leaſt in *England*, and did not return to *Scotland* till the ſeventh of *July* laſt, when the Warrant in the criminal Letters for ſummoning Witneſſes was uſeleſs, by the Elapſe of the Day to which they were thereby directed to be cited, which was the third Day of the ſaid Month of *July*; and as the ſaid *Archibald Stewart* could qualify no Loſs by allowing Mr. *Groſet* yet to be cited, and that, in the Proſecutor's Apprehenſion, it was noways diſagreeable, either to Law or Practice, to give a farther Warrant for citing the ſaid *Walter Groſet* to any ſhort Day they pleaſed to appoint: Therefore praying their Lordſhips for Letters of Diligence for ſummoning the ſaid Mr. *Walter Groſet*, as a Witneſs in the ſaid Cauſe, in common Form.

Which Bill being publickly read in Court, Mr. *Alexander Lockhart*, as Council for the Pannel, repreſented,

Power afterwards to inſiſt againſt him as accords.
Signed, WILLIAM GRANT.

'The Lords Juſtice-General and Commiſſioners of Juſticiary, in reſpect his Majeſty's Advocate does not inſiſt againſt the ſaid *Archibald Stewart*, they deſert the Diet againſt him, and diſmiſs him from the Bar, reſerving to his Majeſty's Advocate to inſiſt againſt him afterwards, as he ſhall ſee Cauſe. *Signed,*
ARGYLL. *I. P. D.*'

Thereafter Mr. *Gilbert Elliot* Advocate) proteſted, that the ſaid *Archibald Stewart* had fulfilled his Bond of Recognizance, by compearing from Time to Time at the ſeveral Diets of Court, and not departing this Court without Leave thereof, the Diet being now deſerted, and he diſmiſt from the Bar, that therefore the ſaid Bond was voided, and thereupon took Inſtruments in the Hands of the Clerk of Court.

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Proceedings in the Second Trial of *Archibald Stewart*, Eſq;

Lord *Strichen* Præſes. *Curia juſticiaria S. D. N. Regis, tenta in nova ſeſſionis domo burgi de Edinburgh, vigeſimo ſexto die menſis Octobris* 1747. *per Honorabiles viros Magiſtros Alexandrum Fraſer de Strichen, Patricium Grant de Elchies, Carolum Areſkine de Tinwald, & Hugonem Dalrymple de Drummore, Commiſſionarios Juſticiarii dict. S. D. N. Regis.*

Curia legitimè affirmata.

Intran.

ARchibald *Stewart* of the City of *Edinburgh*, Merchant, and late Lord Provoſt of the ſaid City, Pannel,

Indicted and accuſed at the Inſtance of *William Grant* of *Preſtongrange*, Eſq; his Majeſty's Advocate, for his Majeſty's Intereſt, for the Crimes of Neglect of Duty, and Miſbehaviour in Offices and Places of publick Truſt, and the Violation of the Truſt and Duty of ſuch Offices, in Manner at Length mentioned in the criminal Letters raiſed againſt him thereanent.

N. B. *The Libel here mentioned, is the ſame with the former Libel,* p. 11. *of the firſt Trial.*

The Libel being openly read, Mr. *Archibald Stewart*, Pannel, craved, That, before he ſhould be obliged to plead Guilty or Not guilty to the Libel, he might be heard by his Council, whether or not he was obliged to anſwer to this ſecond Libel at all?

Mr. *Lockhart* for the Pannel then inſiſted, That now, after a former Libel had been raiſed, the Cauſe debated, Informations given in, the Relevancy determined, and an exculpatory Proof allowed to the Pannel, there could not, according to the Forms of the Court, any new Libel be raiſed: That any Proceſſes of this kind, that have been deſerted, and of new proſecuted, have been always conſidered as a Grievance upon the Subject: And by an Act of Parliament, *James* VI. *Parl.* 6. *cap.* 78. after repeating the many Grievances occaſioned to the Subjects in the Execution of criminal Libels, and deſerting of Diets when ſuch Libels are executed, the Act directs, 'That, for the future, all Proſecutors 'ſhall find Caution to report their Letters duly 'executed, and inſiſt in the Purſuit thereof, until 'the final End and Deciſion of the ſame, under 'the Penalty in the Act mentioned." That however, in former Caſes, the Crown-lawyers have deſerted Diets before pronouncing any Relevancy; yet there could not be an Inſtance ſhown, where, after a Relevancy was determined, the Diet had been deſerted; and, if that were the Caſe, it might be in the Power of any King's Advocate, from a private Grudge, to raiſe a Proceſs againſt a Subject, deſert the Diet, raiſe a new Proceſs, and ſo on *ad infinitum*;

infinitum; which would be equal to a Forfeiture upon the Party accuſed: That the Pannel did not of himſelf intend to make this Objection, but was adviſed to do ſo by his Lawyers; he being always unwilling to form any Objection that might in the leaſt conduce to put off his Trial. At the ſame time it was obſerved by his Lawyers, that it might prove of dangerous Conſequence to the Liedges in general, were ſuch a Precedent allowed of; and therefore, at the ſame time that the Judgment of the Court was demanded upon this Queſtion, repreſented, That he was willing to wave the Objection, provided the Pannel was reimburſed of his Expences in the former Trial, to ſhow their Lordſhips that the Pannel wanted nothing more than to have his Cauſe tried, and himſelf vindicate, by a full Trial.

The Lord Advocate anſwered, That the Council for the Pannel had mentioned no Law wherupon to found their Objection; that the Practice of the Court has been, Time out of Mind, to deſert Diets, and allow of new Proſecutions; that there was no Difference of deſerting a Diet before or after the Relevancy was determined. If indeed the Pannel had *tholed* * an Aſſize, then he might have had Ground to object againſt a Trial, and to complain that it was oppreſſive. That the deſerting the Diet formerly, was owing to the Pannel himſelf, who took hold of a trivial Objection, againſt citing a Witneſs when the firſt Diet of Compearance was elapſed. And both this Point, and the Coſts acclaimed by the Pannel, were ſubmitted to their Lordſhips. At the ſame time, he declined entering in-

* An old *Scots* Law-term, ſignifying a Party's having ſtood Trial, till the Jurors did incloſe, or return their Verdict.

to any Contract with the Pannel upon that head, but depended wholly upon their Lordſhips Determination.

'The Lords Commiſſioners of Juſticiary, having conſidered the foregoing Debate, Find the Pannel, *Archibald Stewart*, muſt ſtill anſwer, and plead Guilty or Not guilty to the preſent Libel, notwithſtanding of the Objection moved for him thereagainſt, ariſing from what is alledged of the deſerting the Diet in the former Libel, after pronouncing Interlocutor on the Relevancy thereof.' *Signed*

ALEX. FRASER, *I. P. D.*

Thereafter Mr. *Stewart* and the Lord Advocate both repreſented, That as the Defences, and Anſwers thereto, were fully pled, and contained in the Informations upon the former Libel, and were the ſame they had now to offer to the preſent, they agreed to refer themſelves to the ſaid Informations, without giving the Court or themſelves any further Trouble.

Then the Court pronounced the ſame Interlocutor on the Relevancy as that pronounced the 6th *Auguſt* laſt on the firſt Libel; and thereafter continued the Diet till next Day at Eight o'Clock in the Morning; and ordained Parties, Witneſſes, and Aſſizers, then to attend, each under the Pains of Law,

Curia

Lord *Strichen* Præſes.

Curia juſticiaria S. D. N. Regis, tenta in nova ſeſſionis domo burgi de Edinburgh, vigeſimo ſeptimo die menſis Octobris 1747, *per Honorabiles viros Magiſtros Alexandrum Fraſer de Strichen, Patricium Grant de Elchies, Carolum Areſkine de Tinwald, & Hugonem Dalrymple de Drummore, Commiſſionarios Juſticiarii dict. S. D. N. Regis.*

Curia legitimè affirmata.

Intran.

Archibald Stewart of the City of *Edinburgh*, Merchant, and late Lord Provoſt of the ſaid City, Pannel, indicted and accuſed as in the former Sederunt.

Follows a Liſt of the Perſons Names and Deſignations who were cited to paſs upon the Pannel's Aſſize.

Sir Charles Gilmour of *Craigmillar.*
Sir Alexander Niſbet of *Dean.*
William Bajrd of *Newbyth.*
Sir John Inglis of *Cramond.*
Sir Robert Myreton of *Gogar.*
William Keir Portioner of *Drumſheugh.*
John Watſon of *Muirhouſe.*
John Niſbet Portioner of *Water of Leith.*
John Cochran of *Alderſton.*
James Dewar of *Vogrie.*
John Preſton of *Gorton.*
George Warrander of *Burntſfield.*
John Sivright of *Meggatland.*
Archibald Brown of *Blackford.*
James Falconer of *Monkton.*
Thomas Wood of *Warriſton.*
James Davidſon of *Haltree.*
Patrick Crichton of *Woodhouſelee.*
Robert Fiſher of *Newhall.*
Thomas Trotter Merchant in *Edinburgh.*
Thomas Dundas Merchant, and late Bailie there.
John Paton Bookſeller there.
William Hog Merchant there.
William Ormſton Copperſmith there.
James Farquhar Merchant there.
Alexander Grant Merchant there.
John Brand Merchant there.
Hugh Clerk junr Merchant there.
Alexander Peter Wright there.
David Clerk Wigmaker there.

John

John Osborn Merchant, and late Provost of *Edinburgh*.
William Wight Baxter there.
Alexander Campbell Brewer there.
William Sands Bookseller there.
John Home Coachmaker there.
Neil Macvicar Merchant there.
William Tod sen^r Merchant there.
James Mitchelson Jeweller there.
Archibald Angus Merchant in *Edinburgh*.
Robert Fleming Printer there.
James Heriot Wright there.
James Stirling Merchant there.
Henry Antonius Wright there.
James Hunter Wright there.
Edward Lothian Goldsmith there.

ARGYLL.
AND. FLETCHER.
P. GRANT.
CH. ARESKINE.

'The Lords Commissioners of Justiciary fine and amerciate Sir *John Inglis* of *Cramond*, *William Keir* Portioner of *Drumsheugh*, *John Watson* of *Muirhouse*, *George Warrander* of *Burntsfield*, *James Davidson* of *Haltree*, *Thomas Dundas* Merchant and late Bailie of *Edinburgh*, *William Hogg* Merchant in *Edinburgh*, *Alexander Grant* Merchant there, and *William Tod senior* Merchant there, and each of them, in the Sum of One hundred Merks *Scots*, for not appearing this Day and Place, to pass upon the Assize of the said *Archibald Stewart* Pannel, as they who were lawfully cited for that Effect, and three several Times called from the Bar, and at the Door of the Court-house, by a Macer of Court, as Use is.' *Signed*

ALEX. FRASER, *I. P. D.*

'Mr. *Archibald Stewart*, Pannel, judicially passed from any Objection competent to him on account of there not being a Majority of landed Men named to pass upon his Jury.' *Signed*

ARCH. STEWART.

The

The Lords then named the following fifteen Perſons to paſs upon Mr. *Stewart*'s Aſſize, *viz.*

Sir Alexander Niſbet of *Dean*.
John Niſbet Portioner of *Water of Leith*.
James Dewar of *Vogrie*.
John Sitright of *Meggatland*.
James Falconer of *Monkton*.
Thomas Wood of *Wariſton*.
Patrick Crichton of *Woodhouſlie*.
Thomas Trotter Merchant in *Edinburgh*.
Hugh Clerk jun^r Merchant in *Edinburgh*.
William Wight Baxter there.
Alexander Campbell Brewer there.
Robert Fleming Printer there.
James Stirling Merchant there.
James Hunter Wright there.
Edward Lothian Jeweller there.

And no Objection being made to any of them, they were all lawfully ſworn.

Follows a Liſt of the Writings referred to in the Libel.

1. Letter from the Pretender's Son, bearing Date from his Camp, 16th *September* 1745, addreſſed, *To the Lord Provoſt, Magiſtrates, and Council of Edinburgh.*

2. Anſwer from the Pretender's Son to the firſt Deputation ſent by the Magiſtrates and Council, to his Camp.

3. Anſwer from *ditto*, to the ſecond Deputation from *ditto*.

4. Repreſentation by the Miniſters of *Edinburgh*, to the Lord Provoſt, Magiſtrates and Council thereof, of Date 6th *September* 1745, in favour of the Deſign of putting the City in a proper Poſture of Defence.

5. Petition and Addreſs to the Lord Provoſt and Magiſtrates of *Edinburgh*, of certain Burgeſſes and Inhabitants of the City, offering to ſerve as Voluntiers in defence of the City, againſt the Rebels, with two Opinions of his Majeſty's Advocate and Solicitor thereto annexed, of Date 7th *September* 1745.

6. Application from the Lord Provoſt of *Edinburgh*, and his Majeſty's Advocate and Solicitor, to Gen. *Gueſt*, on the 16th *September* 1745, for a Party of Dragoons to aſſiſt in defence of the City.

7. Repreſentation of the Committee of Voluntiers, to *Archibald Stewart* Lord Provoſt, without a Date, and unſigned, but found in the Cuſtody of *Archibald Stewart* when he was apprehended.

8. Repreſentation to the Lord Provoſt, Magiſtrates and Council of *Edinburgh*, of certain Inhabitants of the City thereto ſubſcribing, which bears no Date, but will be proved to have been preſented to the Provoſt on the 16th *September* 1745, and was found in his Pocket when he was apprehended.

9. Journal of what paſſed, relating to the Defence of *Edinburgh*, from *Monday September* 2. till *Monday September* 16. in the Hand-writing of the now deceas'd Mr. *Colin*

Colin Maclaurin, Profeſſor of Mathematicks in the College of *Edinburgh*, and found amongſt his Papers after his Death.

10. Examination of *Archibald Stewart*, Eſq; the 7th *December* 1745, before a Committee of the Lords of his Majeſty's Moſt Honourable Privy Council.

His Majeſty's Advocate, and Mr. *Alexander Lockhart* as Council for the Pannel, did admit and agree, that the ſeveral Matters and Facts contained in the Records of the Town-council, and Minutes of the Committee, both produced in Proceſs, do contain the Facts therein ſtated as they truly happened; and therefore agreed to hold the ſaid Records and Minutes as probative of the Facts therein contained.

N. B. *The Matters and Facts referred to, and here admitted, are ingroſſed in the two Informations.*

Mr. *Lockhart* did further admit, that the Articles N° 1. 2. 3. 5. & 6. in the Liſt of Writings annexed to the Libel, as produced for proving the ſaid Libel, are the Writings referred to in the Libel itſelf upon the ſeveral Articles, and are genuine; but did not thereby mean to admit any Facts ſtated in the Libel, or Information for the Proſecutor, with relation to theſe Writings.

N. B. *Theſe Writings ſo admitted, are all ingroſſed and taken notice of in the Informations.*

Follows a Liſt of the Witneſſes Names and Deſignations cited to bear Evidence againſt the Pannel.

N. B. *All thoſe who were examined are marked thus* *.

* George Drummond, Eſq; preſent Lord Provoſt of *Edinburgh*.
* Archibald Macaulay, Eſq; late Lord Provoſt there.
* John Wilſon Merchant, late one of the Bailies there.
* Gavin Hamilton Merchant, late one of the Bailies there.
* James Stewart Merchant, late one of the Bailies there.
Alexander Blackwood Merchant, late one of the Bailies there.

* James

* James Nimmo, Eſq; late one of the Bailies of *Edinburgh*.
* Hugh Hathorn, late Dean of Gild there.
* Robert Baillie Merchant, late one of the Bailies there.
* James Grant Merchant, and preſent Town-Treaſurer there.
* Sir Robert Dickſon, Bart.
* Sir George Preſton of *Valleyfield*.
* James Millar, late Servant to the deceas'd Alexander Bruce of *Kennet*.
* The Honourable Mr James Leſly Advocate, one of the Commiſſaries of *Edinburgh*.
* Archibald Stevenſon Writer in *Edinburgh*.
Andrew Bonar Merchant there.
Andrew Currie, late Deacon of the Weavers there.
Nathan Porteous, late Deacon of the Skinners there.
* Patrick Lindſay, Depute-Secretary to the Forces in *North Britain*.
* Enſign William Roberton of *Edinburgh* Caſtle.
* Robert Griffith, one of the Gunners of the Caſtle of *Edinburgh*.
* Joſeph Mead, one of the Serjeants of the Caſtle of *Edinburgh*.
* John Hiſlop, Storekeeper of the City of *Edinburgh*.
* Alexander Dryburgh, Servant to the ſaid John Hiſlop.
* John Dalgleiſh Watchmaker in *Edinburgh*.
George Cuningham Surgeon there.
* Baillie Bryden, Lieutenant of the Royal Regiment of Artillery.
* Mr. Lewis Douglas Advocate.
* Mr. John Tait, Doctor of Medicine in *Dalkeith*.
* Richard Lindſay, late Bailie of *Muſſelburgh*.
Andrew Alves Writer to the Signet.
* Alexander Scott Merchant in *Edinburgh*.
* Thomas Dalyell, one of the Captains of the City-guard of *Edinburgh*.
* Alexander Coſſar, one of the Soldiers of the City-guard there.
* James Tait Goldſmith in *Edinburgh*.
* James Gilleſpy, Servant to the ſaid James Tait.
* Mr. William Wiſhart, Principal of the Univerſity of *Edinburgh*.
* Mr. George Logan,
* Mr. John Glen,
* Mr. Alexander Webſter,
} all Miniſters of the Goſpel at *Edinburgh*.
Mr. William Robertſon, Miniſter of the Goſpel at *Gladſmuir*.
William Forbes, one of the Principal Clerks of the City of *Edinburgh*.
* William Henderſon Writer there.
* James Murray, Eſq; Receiver-General of the Cuſtoms of *Scotland*.
James Paterſon, Tide-Surveyor of the Cuſtoms at the Port of *Leith*.
* Mr. Robert Craigie of *Glendoick*, Advocate.
* Mr. Robert Dundas younger of *Arniſton*, Advocate.
* Walter Groſſet, late Collector of the Cuſtoms at Alloa, now one of the General Inſpectors of the Cuſtoms of *Scotland*.
Alexander Macmillan Writer to the Signet.

Anne Stewart, Relict of Mr. Colin MacLaurin Profeſſor of Mathematicks in the College of *Edinburgh*.
* George Dunbar Merchant, late one of the Bailies of *Edinburgh*.
* Mr. Joſeph Williamſon Advocate, one of the Principal Town-Clerks of *Edinburgh*.
* Robert Tennent Merchant in *Edinburgh*.
James Rattray, Servant to Robert Fleming Printer in *Edinburgh*.
John Paxton, Clerk to Archibald Stewart, Eſq; late Lord Provoſt of *Edinburgh*.
Robert Johnſton, one of the Soldiers of the City-guard there,
* David Lindſay Writer in *Edinburgh*.
John Coutts, Eſq; late Lord Provoſt of *Edinburgh*.
* Mr. Charles Erſkine of *Edinhead*, Advocate.
Dougal Ged Goldſmith in *Edinburgh*.
William Polſon Vintner there.
* Charles Fraſer Merchant there.
* Donald Mackay Cadie there.
Walter Orrock, late Deacon of the Shoemakers there.
James Norrie Painter there.
John Yetts Merchant, and ſometime one of the Bailies there.
John Steven Merchant there.
David Inglis Merchant, and ſometime one of the Bailies there.
* Edward Inglis Druggiſt there.
Robert Boyd Merchant there.
Alexander Crawford Baxter there.
Archibald Eagle Seed merchant there.
Edward Caithneſs Merchant there.
Francis Jaffray Wigmaker there.
* Mark Sandilands Merchant, late one of the Bailies there.
* Alexander Hepburn Merchant there.
* Robert Brown Taylor there.
William Wightman Shoremaſter at *Leith*.
Charles Leſlie, late Collector of the News paper, intitled, *The Edinburgh Evening Courant*. [N B. *This witneſs was not cited.*]
William Smith Merchant in *Edinburgh*.

Then the Lord Advocate adduced the following Witneſſes for proving the Libel againſt the Pannel.

I. *George Drummond*, Eſq; preſent Lord Provoſt of *Edinburgh*, ſolemnly ſworn, * purged of Malice

* *Partial Counſel*, by the Law of *Scotland*, is, the inſtigating the Proſecution, or offering the Party to depone in his favours; or being preſent with Lawyers at the Conſultation, where it might be ſhown what was neceſſary to be proved.——And every Witneſs, by that Law, is obliged upon Oath to ſwear, that he did neither of theſe Particulars, which is called *purged of partial Counſel*.

Malice and partial Counſel, examined and interrogate, depones, That, upon *Sunday* the 8th of *September* 1745, he was ſent by the then Lord Advocate to Provoſt *Stewart* the Pannel, to acquaint him, That his Majeſty's Sign-manual was come down for raiſing the *Edinburgh* Regiment of a thouſand Men; and, upon that Occaſion, he ſpoke to the Pannel about the Burghers aſſociating themſelves as Voluntiers; but the Pannel doubted of the Legality of ſuch an Aſſociation, and deſired to have the Lord Advocate and Solicitor's Opinion thereupon; which was afterwards procured: But who procured it, or brought it to the Pannel, the Deponent knows not; but remembers, that he had a Converſation with the Pannel upon the Subject of that Opinion, after it came to his Hand: And at that Time the Pannel excepted to it, in regard the Opinion did not expreſsly mention, that it was not treaſonable; upon which an Addition to the former Opinion was obtained from the Advocate and Solicitor, bearing that the Aſſociation was not treaſonable: And which Opinion and Addition being ſhown to the Deponent, depones, That they are the ſame which he has above deponed upon. Depones, That, after it was reſolved to accept of the Voluntiers, the Voluntiers agreed among themſelves, to have a Paragraph inſert in the News-papers; and which Paragraph was accordingly by them drawn up, and bore, That, upon the Receipt of his Majeſty's Sign-manual, authoriſing the Provoſt and Magiſtrates to raiſe a thouſand Men, and the inliſting the Voluntiers, upon the King's Lawyers giving it as their Opinion, that this laſt might be warrantably done, the Provoſt chearfully ſet about it:

And the Deponent was ſent from that Meeting, to ſhow this Paper to the Lord Provoſt; and he ordered the Deponent to ſtrike out the Words, *chearfully ſet about it*, and, in place thereof, inſert, *acquieſced in it*: And it was accordingly ſo put in the News-papers. Depones, That, the Night preceeding the Meeting in the New Church Iſle, being the 9th *September*, the Pannel came to a Tavern where the Deponent and ſeveral other Volunteirs were; and, after they had told him what they had been doing that Day, and what Succeſs they had in carrying forward the Subſcription, in order to aſſociate the Voluntiers together, it was told the Pannel, that they had judged it proper to put on a Badge, or wear a Cockade, as a Mark of Diſtinction of their Loyalty to his Majeſty's Government: But this Propoſal the Pannel heard with a Sneer; and told them, he wiſhed they might not expoſe themſelves to the Ridicule of others: To which one of the Voluntiers, who was the Deponent, made anſwer, *When we put on that Badge, we'll take care no Man ſhall dare to inſult us, be his Character what it will.* Depones, That, upon *September* 10. at a Meeting of the Voluntiers in the New Church Iſle, the Pannel came there, and a pretty large Liſt was given to him by the Voluntiers, out of whom they deſired to have their Officers named; and that, next Day, the Pannel delivered back the Liſt, he having named ſix Captains out of it; and deſired the Voluntiers to name their own Subalterns: That, at the Meeting in the New Church Iſle, the Pannel, by ſeveral Expreſſions, ſignified his Approbation and Satisfaction with the Zeal which the Voluntiers then ſhowed; but, at the ſame Time, and

upon

upon other Occaſions alſo, during that Week, ſeveral Things paſt, which denoted a Coldneſs in the Pannel as to the Meaſures which were then carrying forward. And, being interrogate by the Pannel, depones, He does not remember where it was, or who were in Company with the Pannel and him when that Converſation paſt betwixt them concerning the Crown-lawyers ſigned Opinion; but thinks it was on the Morning of *Sunday* the 8th. As to the third Article, depones, That the Deponent had ſeveral Converſations with the other Voluntiers concerning the City-walls; which was occaſioned by Mr. *Maclaurin*'s Remonſtrances to them, that the Work was not carried on faſt enough, he being employed by the Town-council in directing the putting theſe Walls in a Poſture of Defence: That the Deponent went ſeveral Times, and viewed the Works as they were carrying on; and, in his Opinion, they were carried on in a ſlovenly and careleſs Manner, there being few Hands employed: And he remembers, that Mr. *Joſeph Williamſon* Advocate, was ſent by the Voluntiers to the Provoſt and Magiſtrates, as he thinks, with a Remonſtrance, and to deſire that ſome Things might be forwarded, as contained in a Note relative to theſe Works; whereof Mr. *Williamſon* reported that ſeverals were granted, and at the ſame Time told the Provoſt's Treatment of him was a little rough. Depones, That, upon *Sunday* Night, the 15th *September*, the Pannel, Capt. *James Murray* General Receiver of the Cuſtoms, and the Deponent, being together in Mrs. *Clark*'s, Vintner, Mr. *Maclaurin* came to get Orders from the Provoſt to load the Cannon, in order to try them: That Mr. *Maclaurin*

rin waited ſome time, the Pannel being then in a good deal of Hurry; but when he was going out, he told Mr. *Maclaurin*, That Mr. *Drummond* the Deponent would give him the proper Orders. As to Article fourth, depones, That it was ſeveral times talked of to the Pannel in the Deponent's Hearing, to lay aſide the Trained Bands; and for theſe two Reaſons; firſt, That ſeveral of the Trained Bands were believed to be diſaffected; and, next, It was not convenient for the Voluntiers to do double Duty, both in the Trained Bands, and in their own Companies: That the Pannel diſapproved of this Propoſal, becauſe the Trained Bands were the old Companies of the Town; and beſides, he thought it was imprudent to put a Mark of Diſtinction betwixt the different Inhabitants: That the Deponent remembers, that the Trained Bands of the City were laid aſide in the Year 1715, upon the Occaſion of the then Rebellion; and the Care of the City given to a Body of Voluntiers, who had aſſociate themſelves much in the ſame Manner as thoſe did upon Occaſion of the laſt Rebellion. Depones, That he remembers a Propoſal made among the Voluntiers, for employing a Number of able-bodied Lads, upon the Reward of a Guinea to be given to each of them, in order to fill up the *Edinburgh* Regiment; but knows not whether this Propoſal was made to the Provoſt or not. And, being interrogate for the Pannel, depones, That he knows not whether that Propoſal for laying aſide the Trained Bands, was ever laid before the Council. As to Article fifth, depones, That he remembers, that, upon *Sunday* the 15th *September*, there was come to the Town of *Edinburgh*, of Voluntiers,

tiers, 42 from *Dalkeith*, 100 from *Muſſelburgh*, 180 Seceders, and 70 Exciſe-officers; which, conjoined with above 400 Voluntiers in the Town of *Edinburgh*, 200 of the *Edinburgh* Regiment, and 126 of the Town-guard, made in all 1118 Men in the Town of *Edinburgh*, beſides the Trained Bands. As to the ſeventh Article, depones, That, upon *Monday* the 16th of *September*, he heard from Lord *Home*, there was a Petition, ſuch as is mentioned in the ſaid Article, going forward; but he did not ſee it that Day: That, about Four o' Clock of that Afternoon, the Fire-bell rung, which was the Signal for the Voluntiers to repair to their reſpective Poſts; and which the Deponent accordingly did, by repairing to his Poſt in the *Lawn-market*. As to Article eighth, depones, That, previous to the ringing of the Fire-bell above mentioned, the Deponent came into a Meeting of the Magiſtrates and Council in Goldſmiths Hall, where Mr. *Groſſet* was, who had come there to make Offer of a Body of Dragoons being ſent into the Town, in caſe they were required: That, upon his coming in, he found the Council deliberating what was proper to be done upon that Occaſion: That the Pannel called to the Deponent, to give his Opinion concerning the giving up or defending the Town; the Deponent made anſwer, That there was no Occaſion to aſk his Opinion upon that Point, as he had given it formerly, and by his Actions teſtified his Inclination to defend the Town. That thereafter Provoſt *Coutts* came into the Meeting, and, falling into Converſation with the Deponent, he frequently preſſed the Deponent to ſpeak: At laſt the Deponent carried him to a Corner, and ſaid to him,

'Why

'Why ſhould I ſpeak, conſidering that Lord *Home* 'told me, That he heard you ſay, on *Saturday* laſt, 'as you was coming up the New Bank Cloſe, and 'when he was looking out of the Lord Juſtice-'Clerk's Dining-room Window, That all the Bu-'ſtle and Work they were now making about de-'fending the Town of *Edinburgh*, was idle, and 'Nonſenſe; for that the Provoſt had in his Poc-'ket three Days ago the Terms ſettled in Writing 'upon which the Town was to be given up?" And Provoſt *Coutts* ſeemed concerned, and did not flatly deny it, but avoided owning it. Depones, That a little Time after he left this Meeting, he heard the Fire-bell ring; which made him go to his Poſt in the *Lawn-market*, as above deponed upon; and, after remaining with the Voluntiers for about three Quarters of an Hour under Arms, and getting no Orders, the Officers amongſt themſelves thought proper to adviſe what was to be done; and at laſt came to this Reſolution, as they ſaw they could be of no Uſe to the Town, to return their Arms to the Government, from whom they had them; which was accordingly execute by the Voluntiers, the Country Militia, the Seceders, and Exciſemen; who all marched up to the Caſtle, and delivered up their Arms, except two Companies of Voluntiers, who remained upon Guard at the *Netherbow* Port; and when they returned from the Caſtle, it was about half an Hour after Sunſet. Depones, That, after coming from the Caſtle, he went to ſome Place in the Town, where he expected to get Horſes brought him; and, while he was there, Word came to him, That Mr. *Groſſet* was come from the Country, with an Account, that

that Sir *John Cope* was landed at *Dunbar*; and that he was gone to inform the Magiſtrates of it: And upon this the Deponent went to the Council-chamber, where he met with the Provoſt, and Council, and Mr. *Groſſet*. That Mr. *Groſſet*, upon his coming in, put into the Deponent's Hand, Lord Advocate's Letter, with one directed to the Provoſt, as the Deponent thinks, and another from Mr. *Fall* in *Dunbar*, directed to Lord Advocate, telling of Sir *John Cope*'s Arrival off *Dunbar*. That, upon this, the Deponent told the Pannel, that he hoped he would now think of defending the Town, and ring the Fire-bell, to bring the People to their different Poſts: To which the Pannel made anſwer, That we muſt be tender of the Blood of our Inhabitants; that they had ſent out ſome of their Magiſtrates to treat; and, ſhould the Rebels hear the Noiſe of the Fire-bell, they might hang them up. Then the Deponent propoſed, that a Drum ſhould be beat through the Town; but the Provoſt made anſwer, That the Voluntiers, and others, had delivered up their Arms, and the Military had left them; and they could not defend the Town by themſelves. The Deponent likewiſe told him, It was proper, ſince the Town could not be defended, that the Cannon which were mounted upon the Walls, and the Arms which the Inhabitants had, might be ſo ſecured, as that they ſhould not fall into the Hands of the Rebels. Upon this the Pannel handed over to the Deponent the Letter given in with the Libel, N° 1. and, upon reading it, the Deponent told the Pannel, That he did not know, but if they gave up the Town to the Rebels To-morrow, that next Day the King's Troops

might think they had a Right to uſe it as a Town taken from the Rebels. As to the eleventh Article, depones, beſides what is already ſaid, That the Number of Firelocks and Bayonets which were in the Town-magazine in the Years 1726 and 1727, when the Deponent was Provoſt, were about 1200; and that the Deponent believes the Trained Bands uſed to be ſupplied out of that Magazine. And the Repreſentation given out with the Libel, N° 7. being ſhown to the Deponent; and he being interrogate, Whether he knows any thing of the ſaid Repreſentation? depones, He remembers it to have been drawn up at one of the Meetings of the Voluntiers where he was preſent; that it was read over to them, and afterwards ſent to the Pannel by Mr. *Williamſon*, one of their Number. And, being read to the Deponent, depones, That it is the Remonſtrance before mentioned in his Oath. And being interrogate by the Pannel, Whether or not the Deponent knows that Orders were given for all theſe Particulars by the Provoſt? depones, That the Repreſentation contains four Articles, *viz.* the firſt, concerning the Guards of the Town, of which the Deponent never heard afterwards any Complaint; the ſecond, concerning Ladders, and the third, concerning the inbringing of Meal; both which he believes were complied with, and immediately done; the fourth concerned the Wrights and Maſons being ſet to Work; as to which, the Deponent knows, that Bailie *Robert Baillie* had the Town-Council's Orders, and their full Power veſted in him, to ſee to the Execution of theſe Things relating to the City-walls: And the Deponent does not doubt, but theſe Orders were given, tho' in Fact very few more

Workmen

Workmen were employed, and ſet to Work. *Cauſa ſcientiæ patet.* And this is Truth, as he ſhall anſwer to God.

II. Mr. *James Leſlie* Advocate, and one of the Commiſſaries of *Edinburgh*, depones, That, upon *Monday* the 16th of *September* 1745, about Ten o' Clock Forenoon, the Deponent having ſome Buſineſs with Mr. *Gordon* Merchant, and not meeting with him; and ſeeing the Pannel, he deſired the Pannel to go into *Loch*'s Coffeehouſe, and have it ended with him; and as they were going in, *Andrew Alves* Writer to the Signet followed them, and went in with them; who told them, That he had been out at *Linlithgow* the Day before, where he ſaw the Rebel or Highland Army, and ſeveral of his Acquaintances, particularly the Perſon then called *Duke of Perth*; who aſked him, What they were doing in the Town of *Edinburgh?* that they had need to be careful; for, if they ſtood for their Defence, he would not anſwer for the Conſequences: And that Mr. *Alves* was afterwards carried up to the Pretender's Son, who told him much to the ſame Purpoſe: That, upon this, the Deponent ſaid, This was a very odd Meſſage; but does not remember, that the Pannel ſaid any thing.

III. Mr. *Robert Craigie* of *Glendoick*, Advocate, depones, That, in the laſt Week of *Auguſt* 1745, he was preſent at a Meeting of ſeveral of the Friends of the Government, and Inhabitants of *Edinburgh*, in the Lord Juſtice-Clerk's Houſe, where was preſent alſo Provoſt *Stewart*, now Pannel; where the Propoſal for levying a Regiment of a thouſand Men for De-

fence of the City of *Edinburgh* was talked of: That the Perſons preſent ſeverally gave their Opinions; as did likewiſe the Pannel; at leaſt ſpoke of the Subject: but the Deponent did not take notice of any thing as remarkable in what the Pannel ſaid: That the Deponent underſtood the Purpoſe of that Meeting was, in order to adviſe the Magiſtrates of *Edinburgh* concerning the Lawfulneſs of that Meaſure: That the Meeting generally agreed, that it was proper to apply for his Majeſty's Warrant for that Purpoſe; and the Deponent, being then his Majeſty's Advocate, undertook to write for it; which he did that very Night; and received his Majeſty's Sign-manual, by Expreſs, on *Sunday* the 8th *September*. Depones, That there were preſent at that Meeting, ſo far as the Deponent remembers, the Lord Juſtice-Clerk, Lord *Tinwald*, Provoſt *Macaulay*, *William Alexander* Merchant, and ſeveral others. Depones, That Provoſt *Macaulay* and Mr. *Alexander* followed the Deponent from that Meeting, who aſſured him, that no Scruple needed to be made for fear of want of Money to ſupport that Regiment; for that they would undertake to find Subſcriptions enough to ſupport it: and the Deponent accordingly wrote to one of his Majeſty's Secretaries of State. Depones, That, upon *Friday* the 6th *September* 1745, a Gentleman who had been a Magiſtrate of *Edinburgh*, brought to the Deponent a Petition, propoſed to be ſigned by ſeveral of the Burgeſſes, to be preſented to the Provoſt and Magiſtrates, and deſired the Deponent's Opinion, Whether the Petition contained any thing illegal or improper? and that the Deponent gave his Opinion that it did not: That next Day, the 7th *September*,

September, one of the Magiſtrates came to the Deponent's Houſe, and told him, that the Provoſt, and ſome of the Magiſtrates, wanted to wait of him for his Opinion; and deſired to know his Time: That he ſaid, the Magiſtrates might come when they pleaſed: That accordingly, very ſoon after, the Provoſt, and three or four of the Magiſtrates, came, and laid before the Deponent the Petition now produced in Court; and which was a Copy of the ſame Petition he had ſeen the Day before: That Provoſt *Stewart*, the Pannel, ſuggeſted, that it was unlawful, and, as he was informed, treaſonable, to comply with the Petition: That the Deponent ſaid, That whatever might be the Caſe in ſome Circumſtances, yet at preſent, when there was a Rebellion in the Country, it was not only lawful, but the Duty of every Subject to take Arms in ſupport of the Government. That the Magiſtrates deſired the Deponent, and Mr. *Robert Dundas*, then his Majeſty's Solicitor, their Opinion in Writing: That the Deponent thereupon ſent to Mr. *Dundas*, who immediately came; and, after talking with him, did, in his Preſence, dictate to his Clerk their Opinion, which he took down in Writing, That it was lawful, in the then preſent Juncture, for the Magiſtrates to authoriſe the Petitioners, and others, to take up Arms in defence of the City, and of the Government; and that the Deponent and Mr. *Dundas* ſigned the Opinion, and ſent it with the Petition to the Magiſtrates. That, ſoon after, one of the Magiſtrates brought back the Opinion to the Deponent's Houſe; and told him, that the Opinion did not ſatisfy the Provoſt, meaning the Pannel; and that he declined to proceed

upon

upon the Petition, unleſs the Deponent and the Solicitor would give their Opinion, That the taking up Arms was not treaſonable: That the Deponent teſtified ſome Surpriſe at the Scruple; however, in order to ſatisfy it, the Deponent and Mr. *Dundas* ſigned a ſecond Opinion, That it was not treaſonable for the Magiſtrates to grant the Deſire of the Petition. Depones, That, on *Monday* the 16th *September* 1745, Mr. *Dundas* came to the Deponent's Room, about Mid-day, and brought along with him *Andrew Alves* Writer to the Signet, and told the Deponent, he found him delivering a Meſſage from the Pretender to the People in the Street; and that he had brought him to the Deponent to be examined. The Deponent does not remember whether Mr. *Dundas* brought any Guard alongſt with him. That the Deponent accordingly examined Mr. *Alves*: who told the Deponent, That he had fallen in with the Highland Army on this Side of *Linlithgow* that Morning, and that he had been ſome time with them: That the Perſon called the *Duke of Perth* ſpoke to Mr. *Alves*; and deſired him to deliver a Meſſage to the Provoſt of *Edinburgh*, importing, That he expected to be received into the City without any Oppoſition or Reſiſtance; in which Caſe the City might expect his Protection; but, if he met with any Oppoſition, the City might expect Treatment that neither he nor they would wiſh: That the Perſon whom they called the *Prince*, was near by when this Meſſage was delivered by the Duke of *Perth*, and aſſented to the Meſſage: That Mr. *Alves* came into *Edinburgh*, and, having met with the Provoſt, the Pannel, he delivered this Meſſage to the Provoſt; and that he

had

had repeated the ſame Thing to ſeveral People he met with on the Streets. That the Deponent remonſtrated to Mr. *Alves*, That it was treaſonable in him to carry ſuch a Meſſage from the Rebels: And the Deponent, as he thought it might be attended with bad Conſequences, to raiſe Sedition and Diſſenſion in the Town, by ſpreading this Meſſage, he reſolved to commit Mr. *Alves* to Priſon; and accordingly cauſed his Clerk make out a Warrant for that Purpoſe. That, in the mean time, the Lord Juſtice-Clerk had come to the Deponent's Houſe; and was in the Room with Gen. *Gueſt*: That the Deponent having come into them, told them what had happened, and his Reſolution to commit Mr. *Alves*: That they approved; only, Lord Juſtice-Clerk ſuggeſted, That it would be proper to ſend to the Provoſt; and, if the Fact, of delivering the Meſſage to the Provoſt, was ſuch as Mr. *Alves* repreſented, that it would be proper that the Commitment ſhould be by the Provoſt. That accordingly the Deponent ſent his Clerk with a Meſſage to the Provoſt, in the Name of the Lord Juſtice-Clerk, Mr. *Gueſt*, and his own, deſiring he would come to them: That the Provoſt came very ſoon after; and the Deponent underſtood it was in compliance with the Meſſage. That, upon the Provoſt's coming in, my Lord Juſtice-Clerk told him what Mr. *Alves* had ſaid with reſpect to his delivering the Meſſage to him. And the Provoſt acknowledged the Meſſage had been ſo delivered; that the Provoſt had repeated it to one of the Magiſtrates, the Deponent thinks he ſaid it was to Dean of Gild *Hathorn*; and that he aſked his Opinion, Whether it was proper to mention it to any of

the

the reſt of the Council? That the Dean of Gild ſaid, it was by no means proper. That the Lord Juſtice-Clerk aſked him, Why he did not take notice of Mr. *Alves?* why he did not commit him? that it was a treaſonable Practice. That the Provoſt made ſome Excuſe, That he did not know, or did not think it was Treaſon. That he was told by the Lord Juſtice-Clerk, that he ought ſtill to commit him; and in this Opinion the Deponent concurred with him. That the Provoſt deſired Directions in what Manner: That thereupon the Deponent gave him the Warrant that he had made out. That thereupon the Provoſt went away; and, ſoon after, one from the Provoſt brought to the Deponent a Warrant of Commitment; but the Deponent deſired the Meſſenger to get proper Officers to execute the Warrant; and ſoon after Mr. *Alves* was carried off Priſoner from the Deponent's Houſe; and the Deponent believes he was committed to Priſon. Depones, That, upon the ſaid *Monday*, the 16th *September*, while General *Gueſt* was in the Deponent's Houſe, it was ſuggeſted to the Deponent, that ſome Confuſion ſeemed to ariſe upon the Streets: That it occurred to the Deponent, and to General *Gueſt*, and others, who were coming and going to the Deponent's Houſe, that it might be of uſe to ſuppreſs diſorderly People, and to encourage thoſe who were in Arms for the Government in the City, that a hundred Dragoons ſhould be brought into the Town; and that this might, at the ſame time, be no Loſs to the Service of the Dragoons, if ſo many were choſen out of Colonel *Gardiner*'s Regiment, whoſe Horſes were rendered unſerviceable by their great Fatigues. That the Reſolution was accordingly

cordingly taken; and Sir *John Inglis*, with the Aſſiſtance of ſome other Juſtices of Peace, provided a Quantity of Hay for the Subſiſtence of the Dragoons. That Colonel *Clayton*, who, as the Deponent underſtood, acted as Aid de Camp to Brigadeer *Fowkes*, came ſeveral Times that Forenoon to General *Gueſt* for Orders; and that, at one of theſe Times, General *Gueſt* gave Orders to ſend in the hundred Dragoons, by a verbal Meſſage to the Brigadeer. That General *Gueſt* went to the Caſtle before Two o'Clock. That, before Three, Colonel *Clayton* came to the Deponent's Houſe, and told the Deponent, that Brigadeer *Fowkes* declined to obey the verbal Meſſage touching the ſending in the Dragoons; and that he deſired a written Order from Mr. *Gueſt*: That, upon this, Mr. *Dundas* the Solicitor, and the Deponent, went along with Col. *Clayton* to the Caſtle, and ſtated the Caſe to Mr. *Gueſt*: That Mr. *Gueſt* agreed to give the written Order, but deſired as a Condition, That the Provoſt of *Edinburgh*, Mr. *Dundas*, and the Deponent, ſhould give to him their Opinion in Writing, that it was for the Service of the Government that the Dragoons ſhould be ſent into the Town: That, as the Provoſt was not preſent, the Expedient propoſed, and agreed to, was, That the General ſhould ſign the Order for the Dragoons, and ſhould put it in the Hands of Mr. *Lindſay* the Secretary at War, who wrote the Order; that the Deponent ſhould procure the Provoſt's Subſcription to the Opinion, and his own and Mr. *Dundas*'s; and, upon delivering this Opinion to Mr. *Lindſay*, Mr *Lindſay* ſhould deliver the Order to Col. *Clayton*. That the General accordingly ſigned the Order, and deli-

vered it to Mr. *Lindſay*; and the Opinion deſired was wrote out by Mr. *Lindſay*. That Col. *Clayton*, Mr. *Dundas*, Mr. *Lindſay*, and the Deponent, came down from the Caſtle, and called for the Provoſt at his Houſe, and miſſed him; but met him in the *Lawn-market*, oppoſite to the Entry to *Fiſher*'s Land: That the Deponent told the Provoſt what had paſſed; and that it was proper he ſhould ſign the Opinion, in order to procure the Dragoons. That the Provoſt appeared to be in ſome Confuſion, and ſaid he was haſtening to the *Weſt-port* to ſhut it; that the Highlanders would be there before him. That the Deponent ſuggeſted, that the Meaſure might be of uſe againſt the Highlanders; and that it would be no loſing of Time. The Provoſt agreed to ſtep up to the Deponent's Houſe; and the Provoſt, in the Deponent's Conſulting-room, ſigned the Opinion, and after him it was ſigned by the Deponent and Mr. *Dundas*; and the Deponent having delivered the ſigned Opinion to Mr. *Lindſay*, Mr. *Lindſay* delivered the Order by Mr. *Gueſt* to Col. *Clayton*, in order to be carried to Brig. *Fowkes*. Depones, That Col. *Clayton*, upon his coming to the Deponent's Houſe, did inform the Deponent that the Rebels were on their March, and were come the Length of *Kirkliſton* Water. And when the Deponent was in the Caſtle, he obſerved the Dragoons marching Eaſtward by the long Dikes; and this determined the Deponent to follow them down to *Leith*, where he ſuppoſed they were marching, to ſolicit the Execution of Mr. *Gueſt*'s Order. That he believes this might have been about Four o'Clock at Night. That he met Mr. *Walter Groſſet*, then Collector at *Alloa*, between

tween the *Water-gate* and the *Abbayhill*: That Mr. *Groſſet* told the Deponent he was coming with a Meſſage from the Lord Juſtice-Clerk to the Provoſt, offering him the Aſſiſtance of the two Regiments of Dragoons, or ſuch a Number of them as the Provoſt ſhould deſire, in defence of the Town: That the Deponent told Mr. *Groſſet*, that the Provoſt had agreed to demand, and obtained an Order to bring in a hundred Dragoons; but he might proceed with his Meſſage. That Mr. *Groſſet* did not ſay, nor did the Deponent underſtand, that he had any written Meſſage from the Lord Juſtice-Clerk. That the Deponent found the Dragoons had not gone to *Leith*, but were in their Road to *Fiſherrow*: And he underſtood from Col. *Clayton*, that Mr. *Fowkes* did not incline to divide his Dragoons. However, before the Deponent had come up with Mr. *Fowkes*, Mr. *Stark*, Commander of the Cuſtomhouſe-ſloop, delivered a Letter to the Deponent from the Provoſt of *Dunbar*, acquainting him, that the Fleet, on board of which Sir *John Cope*'s Troops were, was ſeen within the *May* about Two o'Clock; and that they would be at *Leith* with the next Tide, which would happen in the Night-time. That, as the Deponent read his Letter aloud, it was ſoon known through the whole two Regiments, and to Mr. *Fowkes*. That Mr. *Fowkes* thereupon alighted, and went into Mr. *Forbes*'s Houſe; and, as the Deponent underſtood, he there wrote Letters to Sir *John Cope*, acquainting him of the Situation of Matters: And the Deponent found Mr. *Fowkes* not at all diſpoſed to divide his Regiments, or to comply with Mr. *Gueſt*'s Order. While the Deponent was in Mr. *Forbes*'s Houſe,

and Mr. *Fowkes* was writing his Letters aforeſaid, Mr. *Groſſet* returned from *Edinburgh*, and delivered to the Deponent a Letter from the Pannel, addreſſed to the Deponent and Lord Juſtice-Clerk, which he now produces, and is marked by him and the Lord Examinator; wherein he deſires a new Opinion from the Deponent and the Lord Juſtice-Clerk, before he would receive any Dragoons. That this was a Diſappointment to the Deponent, and made him not think it proper to preſs the ſending the Dragoons, as it perſuaded him that Matters were changed from the Time he had left *Edinburgh*. However, Mr. *Groſſet* was ſent back to *Edinburgh*, with the Accounts of Sir *John Cope*'s Arrival; and the Deponent delivered him his Letter, with a Certificate that the Letter and Account was genuine. And depones, That he heard Mr. *Fowkes* mention what he had wrote to Sir *John Cope*; and that he had adviſed him rather to land his Troops at *Preſtonpans* or *Northberwick*, than at *Leith*, as he would be nearer the Aſſiſtance of the Dragoons, who were to be quartered that Night at *Preſtonpans*, or thereabouts. And being interrogate for the Pannel, What he thinks was intended by the Councils mentioned in the Proveſt's Letter above deponed upon? depones, That he apprehends, the Councils therein mentioned is what paſt at a Meeting in the Lord Juſtice-Clerk's, in *Edinburgh*, on *Sunday* Evening the 15th, when Gen. *Gueſt*, Brig. *Fowkes*, Lord Juſtice-Clerk, the Pannel, the Deponent, and ſeveral others, were preſent: That the Deponent underſtood, that it was then agreed upon, that the Dragoons ſhould incamp that Night on this Side the *Calt* Bridge: That ſome time after a Queſtion was

ſtated,

ſtated, Whether the Town of *Edinburgh* might not be a proper Quarter for the Dragoons, to wait there the landing of Sir *John Cope?* and, Whether they could not at pleaſure join him, whatever Situation the Rebels might be in? That the Deponent remembers, that Capt. *Murray*, the Receiver of the Cuſtoms, anſwered, That he thought it would not be a proper Quarter; for that if the Rebels were poſſeſſed of the Suburbs, and ſhould ſet fire to the *Potter-row* and *Briſtow* Ports, the Dragoons could not poſſibly march out. That this was all the Deliberation that the Deponent and the Provoſt together were Witneſſes to concerning the Dragoons coming into *Edinburgh*; and, to the beſt of his Memory, theſe were the very Expreſſions. Whether there was any other Concert upon that Subject the ſaid *Sunday* Evening, the Deponent cannot ſay; as the Deponent went to another Room to examine Priſoners, after the Reſolution was taken touching the Incampment that Night; and when the Deponent returned to the Company, he heard Capt. *Murray*'s Opinion laſt deponed upon; and very ſoon thereafter the Company parted. And depones, That the Petition by the Burgeſſes to the Magiſtrates and Council, and the two Opinions thereon, now produced in Court, and ſigned by Mr. *Dundas* and the Deponent, are the Petition and Opinions referred to in the above Depoſition.

N. B. *The Letter referred to in this Oath, and produced by Mr.* Craigie, *is fully ingroſſed in the Information for the Proſecutor*, p. 53. *except a Poſtſcript, in theſe Words:* I am determined by your Orders,

IV.

IV. Mr. *Robert Dundas* younger of *Arniſton*, Advocate, depones, That the Deponent went for a few Days out of Town about the End of *Auguſt* 1745. That, on his Return, he underſtood, that there had been a Meeting concerning the raiſing a Regiment for the Defence of the City, and likewiſe concerning a Propoſal by ſome of the Burghers and Inhabitants, to ſerve as Voluntiers in that Service: That ſome of thoſe concerned in the Propoſal came to the Deponent's Houſe, to aſk his Opinion concerning the Lawfulneſs of it; and told him, that ſome Difficulties were made about it, particularly by ſome Lawyers. That the Deponent ſaid, He had no Difficulty of its being lawful. In conſequence whereof a Meſſage was thereafter ſent by the Town-council to get the Opinion of Mr. *Craigie*, then Lord Advocate, and the Deponent's; which they accordingly gave in Writing, and ſubſcribed. But, as the Deponent was going away out of Town, ſome Hours after that, he met *Robert Baillie*, then one of the Bailies of *Edinburgh*, and another Member of the Town-council, whoſe Name the Deponent cannot recollect; who told him, That the Provoſt was not ſatisfied with the Opinion; that he excepted to the Manner in which it was expreſſed; becauſe, though they had ſaid it was lawful, they had not ſaid it was not Treaſon: And that thereupon Mr. *Craigie* had already ſubjoined an additional Opinion; but that ſtill Provoſt *Stewart* was not pleaſed, unleſs he got the Deponent's Subſcription. And the Deponent accordingly ſigned that additional Opinion alſo: And that the Opinion, and additional Opinion, in the Clerk's Hands, ſhown to him, are the ſame that were ſigned by him. Depones, That,

upon

upon *Monday* the 16th *September* 1745, the Deponent came down to the Street from Mr. *Craigie's* Houſe about Eleven o'Clock in the Forenoon: That he met Sir *John Inglis* of *Cramond* at the End of the *Luckenbooths*; who told him, That *Andrew Alves* Writer to the Signet was at the Croſs, telling to every body, That he had brought a Meſſage from the Rebels at *Linlithgow*, That, if the Town of *Edinburgh* was peaceably given up, there ſhould no Miſchief be done to the Inhabitants; but, if any Reſiſtance was made, the Conſequence might be fatal to them. That the Deponent went immediately in ſearch of Mr. *Alves*; and, having found him, aſked, What Tale he was thus ſpreading about? and how he came to carry a Meſſage from Rebels? That *Alves* repeated the Meſſage, as above; and excuſed himſelf for bringing it, by ſaying, That he accidentally had been taken Priſoner by the Rebels. That the Deponent immediately carried Mr. *Alves* to Mr. *Craigie's* Houſe, and there left him; and, returning ſome time after, he found together the Lord Juſtice-Clerk, Mr. *Craigie*, and the Pannel, Mr. *Alves* being then in another Room: That he was then told, *Alves* had delivered the Meſſage to the Pannel about an Hour before; and, as the Deponent thinks, the Lord Juſtice-Clerk ſaid, that he and Mr. *Craigie* had ſent for the Pannel as the propereſt Perſon to ſign the Warrant for committing *Alves*: That, in a very little, the Pannel left the Room; and, ſoon thereafter, a Party of Voluntiers came with the Pannel's Warrant, and carried off Mr. *Alves* to Priſon. Depones, That, about Four o'Clock of *Monday* the ſaid 16th *September*, Major *Clayton* brought the Accounts to Mr. *Craigie's*,

where

where the Deponent then was, that the Rebel-army was advancing; and that it was thought proper for the Dragoons to retire to the plain Ground between *Leith* and *Edinburgh*. That thereupon Mr. *Craigie* and the Deponent went to Lt-Gen. *Gueſt* in the Caſtle; who agreed to order a hundred Dragoons into the Town of *Edinburgh*, if the Demand was made in Writing: That Mr. *Craigie* and the Deponent, returning from the Caſtle, met with the Pannel at the *Bowhead* Well; whereupon the Deponent told the Pannel, That they were well met, for they were going juſt to ſend for him, to communicate to him ſomething of Importance: That the Pannel anſwered, That it was not now Time for Conſultation, but for Execution, when the Enemy was at their very Gates: To which the Deponent replied, That it was not for Conſultation, but Execution, that he was wanted; and then the Pannel went up to Mr. *Craigie*'s Houſe: And upon his being told that he might have a hundred Dragoons into the Town, if he thought proper; he anſwered, That it was certainly right, and that he was very deſirous of it. Upon which a Letter was wrote, and ſent to Lt-Gen. *Gueſt*, ſigned by Mr. *Craigie*, the Deponent, and the Pannel, requeſting the foreſaid Number of Dragoons to be ſent into the Town.

V. Mr. *George Logan*, one of the Miniſters of *Edinburgh*, depones, That, in the Afternoon of *Monday* the 16th *September*, the Deponent, and ſome others of his Brethren Miniſters, being told in the Coffeehouſe, that there was a Meeting of a great many of the Inhabitants in the New Church Iſle; and that it was the Opinion of the Meeting, that

that the Town could not be defended againſt the Rebels. The Deponent therefore went to the ſaid Meeting: That he found there the Pannel acting as Præſes of the Meeting; That the Meeting was very numerous: That he could not ſay, that they were compoſed of ſuch as he thought the beſt affected to his Majeſty's Government: That many of them he did not know; but of thoſe he knew, ſeverals were ſuch as he always thought diſaffected, That the Deponent does not remember to have ſeen any of the Voluntiers there, except Mr. *Glen* the Miniſter; but where they were, he knows not. That as the Deponent, or at leaſt his Wife, had a conſiderable Intereſt in the Town, which he was very willing to riſk for the Service of the Government; he propoſed to the Pannel, then Præſes of the Meeting, that the Dragoons ſhould be brought into Town, for the Defence of it; But the Pannel anſwered, The Dragoons were gone too far to be brought back again.

VI. Dr. *William Wiſhart*, Principal of the College of *Edinburgh*, depones, That, in the Month of *September* 1745, the Deponent was preſent at a Meeting of ſeveral of the Miniſters of *Edinburgh*, when it was concerted, that a Paper ſhould be drawn, and ſigned by them, approving of the Deſign of raiſing the *Edinburgh* Regiment for the Defence of the Town, and engaging to contribute towards defraying the Expence. That the Paper was accordingly drawn, and ſigned by the Deponent, and ſeveral other Miniſters in the Deponent's Preſence, of the Date it bears, the 6th Day of the ſaid Month of *September*; and that the Writing ſigned

by the Miniſters in the Clerk's Hands, being N° 4. of the Liſt of Writings ſubjoined to the Libel, is the ſame Paper that was ſigned by the Deponent. [Vide *Lord Advocate's Information*, p. 37.]. Depones, That, in the Afternoon of the 16th *September*, about Four Afternoon, the Deponent went to Goldſmiths Hall, where he found the Pannel, then Lord Provoſt, ſeveral of the Magiſtrates and Counſellors, and ſome others of the Inhabitants of the Town. That ſome of the Meeting, but, as the Deponent thinks, none of the Council, ſaid, That ſeveral of the Inhabitants were in Terror, both for their Houſes and Perſons, ſhould any Defence be made of the Town againſt the Rebels; and therefore were for delivering it up. That no Anſwer was made to this Suggeſtion. But, at that Time, *Walter Groſſet*, Collector of the Cuſtoms at *Alloa*, came into the Meeting, with a Meſſage to the Pannel from the Lord Advocate and Lord Juſtice-Clerk, that there were a hundred Dragoons in Town, and the reſt might be brought in, if his Lordſhip deſired it. That the Pannel anſwered, That that was putting the Thorn in his Foot, but that he would return it; and appealed to Provoſt *Drummond*, then preſent, whether, at a Meeting that had been held the laſt or the other Night, he had not heard it ſaid, that, if he brought any of the King's Troops into *Edinburgh*, it was bringing them into a Poind-fold to be catched by the Rebels? And upon that Account he would give no Orders. That *Groſſet* anſwered, That thoſe who ſent him were ready to give the Orders, if his Lordſhip deſired it. That thereupon he gave Mr. *Groſſet* a verbal Anſwer to return to the Lords Advocate and Juſtice-Clerk, which

which Mr. *Groſſet* ſeemed to underſtand as a Refuſal, and repeated it as ſuch: That the Pannel ſaid he had miſtaken him, and that he would give it him in Writing; and called for one *Henderſon* to write the Anſwer, which the Pannel began to dictate: But the Deponent thinks the Meeting broke up before it was finiſhed. That the Occaſion of the Meeting's breaking up, was, that more People came in preſſing to give up the Defence of the Town. Upon which the Pannel ſaid, We cannot ſtay here; let us ring the Bell, and go into the New Church Iſle. Upon which the Fire-bell was rung. And the Deponent, having gone firſt home, returned immediately to the New Church Iſle, where he found the Pannel ſeated in the Moderator's Chair, and a pretty numerous Meeting, moſt Part of them not known to the Deponent, not even by Sight: Such as he did know, ſeverals of them were ſuch who frequented Nonjuring Meeting-houſes; but others who attended the eſtabliſhed Church. Depones, The firſt Thing the Deponent obſerved at that Meeting was, the preceeding Witneſs, Mr. *Logan*, ſtanding upon a Form, and ſaying, That the ſending out to treat with the Rebels, was inviting them to Town; and that he heard his Majeſty's Troops were nigh at hand to aſſiſt the Defence of the Town: But that this was generally houted in the Meeting, and a Cry raiſed, *They were gone, they were fled, they were gone to Haddington*. Depones, That the Deponent then ſpoke to the Pannel, and put him in mind of the Propoſition that had been about half an Hour before made to him by Mr. *Groſſet*, as from Lord Advocate and Lord Juſtice-Clerk, and deſired to

know what Anſwer had been made. That the Meeting raiſed the former Cry, *They were gone, they were fled.* But the Pannel very civilly interpoſed, and ſaid, The Deponent's Queſtion deſerved an Anſwer; and then repeated in Subſtance what he had before ſaid in Goldſmiths Hall to Provoſt *Drummond.* To which the Deponent replied, That, by the Meſſage he had got, it would ſeem that the Troops could not yet be ſo far off as was alledged at that Meeting. Depones, That thereafter the Deponent, directing his Diſcourſe to the Præſes, ſaid, That he hoped no Gentleman in that Meeting would dare to propoſe the delivering up the Town to the Rebels, or Words to that Purpoſe. The Pannel anſwered, Yes, it is propoſed. Another Gentleman replied, No; Sir, it is not propoſed to deliver up the Town to the Rebels, but to ſend out to treat with them; and then they will go by the Town. Upon which the Deponent ſaid to the Præſes, That, before making a Propoſal of that kind, or, which the Deponent thinks was his Words, before putting a Queſtion of that kind to any Meeting, he ſhould have firſt purged the Town of the known Enemies to the Government that were in it. Againſt which a Hout was raiſed in the Meeting; and one of them ſaid to the Deponent, Then you ſhould be amongſt the firſt that ſhould be put out of it; which raiſed a great Laugh. That, at the ſame Meeting, Bailie *Hamilton* ſaid to the Pannel, That if it was propoſed to deliver up the Town to the Rebels, his Lordſhip ſhould firſt ſend Orders to the Voluntiers to deliver up the Government's Arms, that they might not be ſurpriſed by the Rebels: But the Deponent

heard

heard no Anſwer made to it. Depones, That Sir *George Preſton* of *Valleyfield*, who had the Command of a Company of Voluntiers then planted at the *Netherbow*, came into the Meeting, and deſired to know from the Pannel, What he was to do with his Company? or what Orders he was to give him? That the Pannel anſwered, I cannot anſwer that yet; by and by. That Sir *George* ſaid, That if they were propoſing to deliver up the Town to the Rebels, it was Time for him to know what he was to do, for he could not ſtay; and deſired an Anſwer. That no Anſwer was given him, ſo far as the Deponent heard. That then the Pannel put the Queſtion to the Meeting, Who are for defending or holding out the Town? if any, let them ſpeak? To which the Deponent ſaid, That he was, though he ſhould be alone there: That Sir *George Preſton* ſaid, And I; and that one or two more ſaid the ſame: But the Generality of the Meeting were of another Opinion. Depones, That the Pannel then put the Queſtion, Shall we ſend any to treat with them? Upon which the Deponent ſaid, That he hoped not to have lived ever to have heard ſuch a Queſtion put by a Lord Provoſt of *Edinburgh*. But no Reply was given. And then the Pannel put the Queſtion, Who ſhall we ſend to treat with them? Upon which the Deponent, and Sir *George Preſton*, left the Meeting: And, upon their coming out, the Deponent ſaw ſome of the Captains of the Voluntiers leading up their Men to the Caſtle to deliver up their Arms. Depones, That, upon *Saturday* the 14th, the Deponent was told, that the Ringing of the Fire-bell was appointed as a Signal for the Voluntiers conveening in the *Lawn-*

market,

Corps, and went away, in time of Danger? ſaith, That he had waited ſo long upon the Street among the Voluntiers, without any Orders or Directions, not knowing what was to be done, that he begun to believe the Town was to be delivered up, and the Voluntiers, with their Arms, put into the hands of the Rebels; and therefore, though perhaps it was not very agreeable to military Diſcipline, he thought it the ſafeſt and beſt for him, to retire: And alſo ſaith, That when he came to a Reſolution to go away, he applied to one of the Officers of the Voluntiers, to have Leave to put his Gun into the hands of a Caſtle-ſoldier who was there attending, and had been with him frequently before, in order to teach him ſomewhat of the military Diſcipline: Which the Officer agreed to; and the Gun was accordingly put into the Soldier's Hands, with Sixpence for his Trouble in carrying it to the Caſtle.

VIII. *James Stewart*, Merchant, and one of the Bailies of *Edinburgh*, depones, That there was a Propoſition, in the End of *Auguſt*, or Beginning of *September* 1745, for raiſing a Regiment of a thouſand Men, by Subſcription, for Defence of the City againſt the Rebels; but that the Deponent can ſay nothing from his proper Knowledge, by whom ſuch Propoſal was made to the Pannel, or how it was received by him, not having been preſent; nor does he know of any Objections made by the Pannel againſt it, otherwiſe than by Hearſay from others. And further ſaith, That, upon the 5th *September* 1745, which was a Day of publick Faſting in the City of *Edinburgh*, the Deponent, reflecting upon the preſent Danger that threatened the City

City and the Kingdom, begun to think, that proper Meaſures were neglected, which ought to have been taken: And therefore he applied himſelf to ſet down in Writing what occurred to him as proper to be done on the Occaſion. And the Reſult of this was, a Memorandum he wrote, and carried with him to a Meeting of a great many of the Inhabitants, who commonly uſed to aſſemble themſelves in an Evening, to talk together of the preſent Poſture of Affairs, and to conſider what was proper to be offered for the Defence of the City, and for oppoſing the Progreſs of the Rebels. That, upon reading and conſidering the foreſaid Memorandum, they came to a Reſolution, to form a Petition and Addreſs to the Lord Provoſt and Magiſtrates, That ſome of the Burgeſſes and Inhabitants of the City, who offered to ſerve as Voluntiers, in defence of the City, againſt the Rebels, might be properly diſpoſed of, and commanded by Officers to be appointed. And, for this End, a Committee was appointed to draw up ſuch a Petition, and Addreſs; who accordingly did meet, and form the Petition and Addreſs now ſhown to the Deponent, marked N° 5. in the Liſt of Writings produced for proving the Libel; which Petition and Addreſs was wrote that Night, and ſigned by the Deponent, and ſeveral others, and next Day by more Perſons; when a Deputation from the Meeting was ſent with the ſaid Petition to the Pannel, then Lord Provoſt of *Edinburgh*. That the Gentlemen who went to carry the Addreſs to the Pannel, returned again to the Company, where the Deponent remained; and the Pannel came along with them; who, when he entered into the Company, ſeemed to be out of Humour,

mour, and complained that any ſuch Paper ſhould have been concerted and drawn up without acquainting him; and addreſſed himſelf particularly to the Deponent, telling him, He was greatly ſurpriſed, that he ſhould have had any Concern in it, without giving him any Notice of it. That the Deponent anſwered, It was late upon the 5th of the Month before the Paper was concerted and drawn up, or ſigned by any body: That next Morning he was employed in getting Subſcriptions to it, that it might be preſented to the Pannel with greater Weight. To which the Pannel replied, That the Matter of this Addreſs was what he was to conſider, and not the Number of Perſons who ſubſcribed it; and that, in his Judgment, it was treaſonable; and that he himſelf had taken the Oath of Abjuration, which obliged him to oppoſe every thing that was treaſonable: And further added, with a Sneer, That he knew of nothing to be Treaſon, but what the Law had made ſo. Upon which, ſome of the Company, and the Pannel, had ſome pretty high Words, arguing about the Nature of the Paper, and whether it was treaſonable or not. Thereupon the Deponent ſaid, He was afraid it would require ſome Time and Pains to convince the Pannel of the Reaſonableneſs of it; but that he now had a Paper put into his Hands, ſigned by a Number of Gentlemen of Character; and that the Deponent hoped, that he would not reject it, without taking Advice; which if he did, and conſidered it thoroughly, the Deponent hoped he would alter his Opinion. That the Deponent, upon this, left the Company, and went to Mr. Solicitor *Dundas*'s Houſe, where he found Bailie *Gavin Hamilton*, and ſome

other

other Perſons, with Mr. *Dundas*; to whom he related what had paſſed in the Company, and what he has above ſaid; and added, That he was perſuaded Provoſt *Stewart* would not venture to reject the Propoſition made to him, without calling for the Advice of the Crown-lawyers; and therefore he, the Deponent, hoped Mr. Solicitor would be ready to give the proper Anſwer, if the Queſtion was laid before him. Mr. Solicitor *Dundas* then ſaid, He ſhould early in the Morning wait on Mr. *Craigie*, then Lord Advocate, and concert with him what was fit to be done. Depones, That, at this Time, in Mr. *Dundas*'s, it was concerted between the Solicitor, Bailie *Gavin Hamilton*, and the Deponent, that in caſe the Provoſt ſhould reject the Petition, that Bailie *Gavin Hamilton*, being next Magiſtrate, ſhould call the Council together, and lay the Matter before them, and endeavour to get the Advice of the Crown-lawyers. Depones, That, upon *Saturday* the 7th of *September*, the Gentlemen who uſually met together to conſider what they could do for the Defence of the Place, thought it fit to publiſh a Paragraph or an Advertiſement in the *Edinburgh* News-papers, in order to encourage People to aſſociate themſelves for the Defence of the Place. And ſuch a Paragraph having been drawn up, narrating, that an Addreſs having been made to the Magiſtrates, they had taken the Opinion of the Crown-lawyers, who approved of it; and that it had likewiſe met with the Lord Provoſt's hearty Approbation and Concurrence, of Words to that Purpoſe; the Paragraph was ſent by two of their Number, Provoſt *Drummond*, as the Deponent thinks, and the Deponent himſelf. Upon ſhowing it to the

Pannel, he cauſed daſh out that Part of it relating to his hearty Approbation and Concurrence; and inſert in place of it, *which he heartily acquieſced in.* That the Deponent, and the Perſon who went alongſt with him, repreſented, That the Reaſon of their uſing the Words which were altered by the Pannel, was, to encourage People to enter into the Aſſociation. However, the Pannel ſtill continued of the Opinion he had expreſſed. Depones, That, about the Middle of the Week which preceeded the Rebels Entry to the City of *Edinburgh*, at a Meeting of the Inhabitants, who uſually came together in the Evening to conſider of what was proper to be done for the Defence of the City, the deceas'd Mr. *Maclaurin* and the Deponent were preſent; when it was ſuggeſted, that ſeveral Things were left undone that ought to be taken care of for the publick Safety; and that it was proper theſe Matters ſhould be laid before the Lord Provoſt. And it was propoſed, the Deponent ſhould go from the Meeting, and, in their Name, lay them before the Lord Provoſt. That the Deponent ſaid he was willing to follow their Directions in that Matter, but did not care to truſt to his Memory; and therefore called for Paper, Pen, and Ink, and took down in Writing ſuch Particulars as Mr. *Colin Maclaurin* dictated to him. And, when that was done, as the Deponent thinks, Mr. *Mark Sandilands* went along with him to find out the Provoſt, who was then in a Tavern; and, as the Deponent thinks, in *Walker*'s Houſe. That they went to another Room in the Houſe, where the Provoſt came to them; and they communicated to him what was contained in their Paper. Among other Things that the Meeting they

came

came from thought, it was proper there ſhould be a general Search in the Town for Arms, leſt there might be ſome concealed for the Uſe of the Rebels; as alſo, that the Lord Provoſt ſhould concert with the Lord Advocate, or any proper Perſon, that a Search ſhould be made in the Places adjacent to the Town, which were not within the Royalty. That to this the Pannel anſwered, That *Edinburgh*, and the adjacent Parts, could with very great Difficulty be ſearched ſo narrowly, as that concealed Arms ſhould be diſcovered; and that he did not ſee any good Purpoſe it could ſerve to make a Search, or Words to that Purpoſe: But, if they inſiſted upon it, Orders ſhould be directed for ſuch a Search. Depones, That the laſt of the Particulars taken down in the Paper was, a Demand that the Pannel by himſelf, or others of proper Authority, ſhould procure fifty, forty, or at leaſt thirty Sailors, out of his Majeſty's Ships, who were moſt expert in managing of Cannon, in order to be aſſiſting in the Defence of the City, by taking the Direction of the Artillery that were placed upon the Walls, or in the Town. Upon reading of which, the Pannel fell into ſome Heat of Temper, and ſaid, 'By God, 'Sir, while I am Provoſt of *Edinburgh*, Sailors ſhall 'not be admitted.' And the Deponent having repreſented to him, That there were none in Town that knew how to manage Cannon; and that Application had been made at the Caſtle, but no Gunners could be ſpared from thence; and aſked, What he would ſubſtitute in their place? he made no Anſwer, but the former repeated, That, by God, while he was Provoſt of *Edinburgh*, no Sailor ſhould be admitted. And the Deponent being

greatly

greatly ſurpriſed, as ſome time before, when he the Deponent had been inſiſting with him that Cannon ſhould be provided for the Defence of the Place; he objected againſt it, and ſaid, He could not ſee they could be of any Uſe, as we had no body that knew how to manage them: The Deponent therefore, raiſing his Voice, demanded to know the Reaſon of ſuch an extraordinary Piece of Conduct. To which the Pannel replied, with ſome Heat, 'My 'Reaſon, Sir, is plain. If they ſhould be admit-'ted here, it would be, *Damn your Blood, Jack; 'fire away, and be damn'd*; and ſo they would fire upon, and murder the Inhabitants: And it is my 'Duty to protect the Lives of the Inhabitants, as 'well as to defend the Town againſt the Rebels;' or Words to that Purpoſe. Whereupon the Deponent left him.

IX. *James Grant*, Merchant, and preſent Town-Treaſurer of *Edinburgh*, depones, That, in the Afternoon of *Monday* the 16th of *September* 1745, which was the Day that immediately preceeded that upon which the Rebels entered the City, the Deponent was in the Goldſmiths Hall, where the Pannel, and a good many other People, were met together; and heard two or three of thoſe who were preſent, whom the Pannel publickly deſired might give their Opinion, Whether it was proper to defend the Town, or not? and who declined to explain themſelves upon that Matter, obſerve to him, That if the Town was to be delivered up, proper Meaſures ought to be taken for preſerving the Arms from falling into the hands of the Rebels. And being interrogate for the Pannel, Whether it related

ted to the Government's Arms, or to the Arms of the City? depones, He does not remember any Diſtinction was made; or further, than that the Arms in general were mentioned. And further ſays, That this Obſervation was made by Major *Thomas Gochran* and Capt. *James Murray*, and, as the Deponent thinks, by Dean of Gild *Hathorn*. And depones, That he does not remember, whether any thing was ſaid further upon that Subject. Depones, That when ſeveral of the Perſons preſent had declined to give their Opinion as to defending the Town, the Provoſt declared, That it was his Opinion it ought to be defended; and that they might hope for better Terms, in caſe the Town were at laſt to be ſurrendered, with Arms in their Hands. That, betwixt Three and Four in the Afternoon, while the Deponent was at this Meeting, Mr. *Groſſet* came in, ſent, as the Deponent believes, from the Lord Juſtice-Clerk, or ſome other Perſon; and made an Offer to the Pannel of a hundred Dragoons, to aſſiſt in defending the City, if he would ſend an Order for their entering the ſame. To which the Pannel anſwered, He would ſign no Order; but if they came in, they ſhould be made very welcome. And depones, That he left the Meeting, and went home. And being interrogate, Why he left the Meeting, when they were deliberating concerning the Defence of the Town? ſaith, That he went away in the Belief that the Town was to be ſurrendered; induced to think ſo from the Dragoons marching Eaſtward; and that he perceived the Well-affected in the Town had a Jealouſy of the Provoſt: And the Deponent likewiſe perceived, that the Removal of the Dragoons had made People's Spirits ſink. De-

pones,

pones, That, ſome few Days before the Rebels entered the Town, the Pannel ſpoke to the Deponent in the Parliament-cloſe, and told him, That, as the Voluntiers had made the Propoſal of bearing the Charges of repairing the City-walls, he thought it was proper the Money ſhould be immediately advanced; becauſe he doubted, if that was not done, it would in the End fall upon the Town. To which the Deponent anſwered, That it could not be expected they could advance the Money at that Time. Further ſays, That Mr. *Alexander Webſter* joined them at this Converſation; and the Pannel made the ſame Propoſition to Mr. *Webſter* that he had made to the Deponent; who made the ſame Return as the Deponent had done. And being interrogate for the Pannel, Whether this Converſation related to the Reparation of the Walls, as to which, Orders had been given by the Council to repair the ſame, and the Reparation was going on; or as to ſome additional Fortification, which had been propoſed by the Voluntiers? depones, That he knows Orders had been given by the Council for repairing the Walls before that Converſation happened; but that this Converſation related to the Expence of the Work: But whether it was the Expence of the Reparation of the Walls, or of ſome new projected Piece of Fortification, the Deponent cannot be poſitive.

X. Mr. *Joſeph Williamſon*, Advocate, one of the Principal Clerks of the City of *Edinburgh*, depones, That he was preſent at a Meeting of ſeveral of the Burgeſſes of the City of *Edinburgh*, upon the 5th *September* 1745; when it was agreed, that a Petition ſhould be preſented to the Lord Provoſt, for

Leave

Leave to ſuch of the Citizens as ſhould pleaſe to aſſociate themſelves as Voluntiers for the Defence of the City. That accordingly ſuch a Petition was framed; and the Deponent aſſiſted in framing it. And the Paper marked N.° 5. in the Liſt of Writings ſubjoined to the Libel, being ſhown to him, depones, It is the ſame framed as above; which was ſigned by all the Company preſent that Night. That he did not ſee this Application offered to the Pannel the next Day; but had occaſion to converſe with him on the Subject of it in the Evening of that Day; when he told the Deponent, that he looked upon the Paper as treaſonable; and aſked his Opinion thereanent. To which he anſwered, He did not think it treaſonable, to take up Arms in defence of the King and the Country, though without Warrant, there being a ſubſiſting Rebellion in the Country. Depones, That, after the Petition was approved of, he was preſent at making a Draught of an Advertiſement to be inſerted in the News-papers; in which there were Words to this Purpoſe: That the Pannel heartily agreed or concurred with the Deſire of the ſaid Petition. That two of the Company, when the Draught was made, were ſent to wait upon the Pannel with it. That they went; and, when they returned, reported the Draught with an Amendment made by the Pannel's Order, by daſhing out the Words, *heartily agree or concur*; and putting in place thereof, *acquieſced in*: And that he heard the ſaid Report, and ſaw the ſaid Amendment. Depones, That he was preſent at a Meeting in the New Church Iſle, upon the 9th *September* foreſaid: To which the Pannel came, and named the ſix Captains; and, as the Deponent re-

members, expreſſed his Satisfaction with the Zeal of the Petitioners; but in what Terms, he does not remember: Nor did he himſelf obſerve any contrary or diſreſpectful Behaviour of the Pannel's on that Occaſion, though he heard others talk differently of it. Depones, That, upon *Wedneſday* the 11th *September* foreſaid, the Deponent went round the City-wall, from the *Briſtow* Port to the *Weſt* Port; upon which he ſaw but four or five Men working. That, on *Friday* thereafter, the 13th, he was deſired by ſeveral of his Brethren-volunteers, to remonſtrate to the Provoſt and Council, that the Reparation of the City-walls was carried on ſlowly; and to lay before them ſome Propoſals that were thought neceſſary for that Purpoſe: Some of which the Council agreed to, and ſome were diſagreed to: But that he remembers only one Article diſagreed to, relating to a Houſe at the *Potter-raw* Port, which was propoſed to be taken down, or ſo built up as not to infeſt the Walls at that Port. That the Deponent and the Pannel had ſome warm Words with reſpect to the Works going on ſlowly: And he propoſed to the Pannel, that Bailie *Hamilton* ſhould be authoriſed to overſee theſe Works; but the Pannel replied, That that Truſt was already committed to Bailie *Robert Baillie*. Depones, That he was not preſent when the Propoſal for putting Arms only in the Hands of ſuch of the Trained Bands as were well affected to the Government, was firſt made: But, ſome time after, he heard the ſame Propoſal renewed to the Pannel; and his Anſwer was, He could not think of diſtinguiſhing or diſcriminating one Part of the Trained Bands from another. That, upon *Wedneſday* the 11th of *September*, he,

and, he thinks, Bailie *Wilſon*, carried a Propoſal to the Pannel, to ſearch for Arms within and in the Neighbourhood of the City; and he believed a former Meſſage had been carried to the Pannel for that Effect. That the Pannel anſwered, He was willing a Search ſhould be made in the Neighbourhood; but he could not agree to make it within the City, becauſe it would create a great deal of Confuſion, as he ſaid. Depones, That he was not at the general Meeting held in the New Church Iſle, upon the Afternoon of the 16th of *September*; becauſe, juſt before it, the Fire-bell was rung, which was the Signal to the Volunteers to repair to their ſeveral Poſts; and which he accordingly did: And that neither before his repairing thither, nor while he ſtaid there, was there any Orders ſent by the Pannel to the Voluntiers how to diſpoſe of themſelves, ſo far as he knows: And that Provoſt *Drummond*, then a Captain of one of the Companies of Voluntiers, having repreſented to the other Officers, that no Orders had come how they were to diſpoſe of themſelves, ſuggeſted, That he thought it was proper, ſince they got their Arms from the Government, and it ſeemed were not to uſe them, or were not at liberty to uſe them, or Words to that Purpoſe, that therefore it would be proper for them to return them to the Caſtle. Upon which they immediately marched up to the Caſtle, and delivered up their Arms. And being interrogate, How long he thinks they might have been at the Alarm-poſt before they marched up, and delivered the Arms? and how the Voluntiers come to take upon them, without Orders from the Pannel, their Colonel, or without knowing that they were to receive no Order, to de-

liver them up? depones, That he cannot precisely tell how long the Volunteers were upon the Alarm-poſt; but that he went to Captain (Provoſt) *Macaulay*'s Houſe, whoſe Lieutenant he was, deſiring him to go to the College-yards to their Company: That, after going there, and finding the Company was gone, they returned to the *Lawn-market*; but, by the Way, the Deponent ſtepped into the Goldſmiths Hall, where he ſtaid hardly ſo much as a Quarter of an Hour: That, when he came to the *Lawn-market*, the Company was there: And that there were two Cheſts of Arms in the College-yards, and the Carts, Carters, and Horſes, which had brought them, ſtanding by, without ſo much as a Centry; which Mr. *Macaulay* and he inſiſted they ſhould carry back again; but which the Carters refuſed at firſt to do: And an Officer, who came from the Caſtle, alſo declined to have it done; becauſe his Orders were to leave them there: And what betwixt perſuading the Officer to allow them to be carried back, and threatening the Carters to yoke their Horſes to carry them, which at length was complied with, a good deal of Time was ſpent: And, when the Arms were delivered into the Caſtle, it began to be duſkiſh: And, to the latter Part of the above Interrogatory, depones, That, about the Time that, without Command, the Volunteers delivered up their Arms, it was whiſpered by ſeverals among them, though he himſelf did not ſay ſo, that they were betrayed; and they would be cut in Pieces, without doing any good Service: But the publick Reaſon given, as above, was, That they had got no Orders, and had no Reaſon to expect any. Depones, That one Part of the Propoſals

made

made by the Deponent to the Pannel, was in relation to bringing in long Ladders in the Suburbs of the Town; to which the Pannel agreed, and ſaid, He would iſſue Orders accordingly. He does not know, if ſuch Orders were given or not; but he, upon Application to the Bailie of *Potter-row*, and by his Warrant, ſeized, and brought into the Town, ſeveral long Ladders, about fourteen or ſixteen, from the *Potter-row* and thereabouts, upon the 16th *September*.

XI. Sir *Robert Dickſon* of *Carberry*, Baronet, depones, That, in the Evening of *Sunday* the 15th *September* 1745, he came to the City of *Edinburgh* upon the Head of 150 Voluntiers from *Irvereſk*, *Muſſelburgh*, and the Neighbourhood, according to the Report of *Daniel Matthiſon*, an old Serjeant, who had drawn them up to number them. That he acquainted the Pannel that Night, about Ten o'Clock, that he had marched theſe Voluntiers to aſſiſt in defence of the City, under his Command, againſt the Rebels; and deſired, that the Pannel might furniſh him and them with Arms for that purpoſe. That the Deponent met with a ſo and ſo Reception; that is, not ſuch as he expected: For that he did not thank him for bringing in the Men, but carried him into a Room in Mrs. *Clark*'s Houſe, where there were ſeveral of his Acquaintances. That the Pannel ſaid, It was too late to give out Arms to them that Night, but that they ſhould have them next Morning. That the Pannel ordered a Refreſhment for the Men; and they were quartered in the New Church Iſle. That no Arms were delivered to them next Morning. That the Deponent

applied

applied to the Pannel on the *Monday* Morning for Arms; and he anſwered, they ſhould have them by Nine o'Clock: But they were not then delivered; and the Men ſtaid in the Town till about Mid-day *Monday*; and he believes went then home. But that an Hour after the Deponent had been with the Pannel that Morning, he deſired Bailie *Lindſay* of *Muſſelburgh* to go to the Pannel, and inquire for the Arms; for he the Deponent would not go near him again. That, when the Deponent talked with the Pannel that Morning, he the Pannel propoſed to the Deponent, that his Men he had brought to Town ſhould inliſt in the *Edinburgh* Regiment.

XII. *Gavin Hamilton*, Bookſeller, and late one of the Bailies of *Edinburgh*, depones, That he was deſired by ſome of the Meeting which had formed and preſented the Petition to the Pannel and Council of *Edinburgh*, in relation to the Aſſociation of Voluntiers, to meet with them, to talk on that Subject, on the Evening of the 6th of *September* 1745. That the Pannel declined going, upon account of his being tired going round the Walls of the City, with this Deponent, the deceas'd Mr. *Colin Maclaurin*, and ſeveral others. And the Deponent replied, That the Gentlemen of that Meeting poſitively expected him there. To which the Pannel made no Reply; but he underſtood the Pannel went to the Meeting, though he the Deponent was not there. Depones, That, after the Council of *Edinburgh* had ordered the City-walls to be repaired in *September* 1745, this Deponent, upon the 6th of *September*, walked round the whole of them with the Pannel. That, on the 7th of *September*, he

he again went to visit the said Work; and found but nine Men working at that Work, although he expected to have seen two or three hundred; and that, meeting with Deacon *Mack*, who had the Charge of the Workmen, he asked the Deacon, How it came there were so few People employed in the said Reparation? and he thinks the Deacon answered him, That the Pannel had told him, that, unless he had a more special Warrant for his Work, he might get it for his Payment. That that very Day, this being complained of in Council, that the Work was carried on very slowly, the Deacon obtained a more special Warrant for making Reparations of the Walls, and obtained Press-warrants against Workmen. That the next Day, being the 8th of *September*, he again made the Round of the Walls, and found only fourteen Men at Work. That several Complaints were made of the Slowness of the Work to the Deponent, and several others of the Council: But the Deponent knows not whether any such Complaints were made to the Pannel. Depones, That, when the Reparation of the Walls was first proposed, the Pannel objected to it, on account of the Expence, and the Lowness of the Town's Funds: But the Deponent recovered, from Bailie *Hope*, he thinks, the Account of the like Expence which was incurred in the Year 1715, amounting to but about *L.* 200 or *L.* 300. That this Objection was dropped, and the Work begun. That he knows nothing of the Proposal that was made to the Pannel, for getting Sailors expert in Gunnery to serve the City-cannon; but, some time after he heard of that Proposal, he saw upon the Council-table a Letter lying from the Commander

of

of the *Urſula*, one of his Majeſty's Ships, addreſſed to the Pannel, acquainting him, That he had no Gunners to ſpare for the Service of the City: And the Deponent ſuppoſes that this was an Anſwer to a Letter wrote by the Pannel demanding Gunners. Depones, That he himſelf made a Propoſal to the Pannel, for laying aſide the Trained Bands from the Service of the City, becauſe he believed there were too many diſaffected to the Government amongſt them. That the Pannel rejected it; and ſaid, He would ſtand for the Honour of the Trained Bands. Depones, That ſome Voluntiers came from the Neighbourhood of *Muſſelburgh*, *Dalkeith*, and other adjacent Places, on the 15th of *September*; and that the Deponent had Occaſion to meet with Dr. *Tait*, juſt as he parted with the Pannel: That the Doctor complained, That the Pannel had uſed him roughly, and was in a Paſſion at him, for no other Reaſon, as he ſaid, but for bringing in his Men. Depones, That, at a Council-meeting upon the 16th *September* 1745, in the Goldſmiths Hall, he ſaw a Petition ſigned by ſeveral of the Inhabitants of *Edinburgh*, and particularly by ſome of his own Acquaintances, (whom he chided for having ſigned it), deſiring a general Meeting to be called, to conſider what was proper to be done. That he does not know how the ſaid Petition came in; nor does he remember whether it was read or not; nor can he ſay, that it was preſented, or put in the Hands of the Pannel, though he ſaw it in his Hands. And the Paper, marked N° 8. in the Liſt ſubjoined to the criminal Letters, being exhibited to the Deponent, depones, It is the ſame which he ſaw on the Table, in the Goldſmiths Hall, and in the Pannel's

Hand.

Hand, That the Meeting in the Goldſmiths Hall ſoon broke up, and another was immediately held in the New Church Iſle; at both which the Pannel preſided. That, in this laſt Meeting, there was a great deal of Confuſion; the Petition was again talked of; but he does not remember it was read: And it was under the Conſideration of that Meeting, whether the Town ſhould be defended, or delivered up to the Rebels? and the far greater Number of the Meeting were for the latter. It was alſo under Conſideration, if ſome Dragoons ſhould be brought into the Town for the Defence of the City, in conſequence of Offers to that Purpoſe, ſeverally made by Mr. *Groſſet*, and Mr. *Lindſay* Secretary at War? but the Cry of the Generality was, *No Dragoons, No Dragoons*: And he heard the Pannel repeat theſe Words, *No Dragoons*; but whether as his own Opinion, or as the Senſe of the Meeting, he cannot ſay: But the Meeting reſted in that Opinion. That, in the ſame Meeting, the Deponent propoſed, that the Arms of the City ſhould be ſecured in the Caſtle, ſince the Meeting had reſolved not to defend it; and the ſame Propoſal alſo comprehended the King's Arms then in it: Which Propoſal the Pannel repeated to the Meeting, as coming from the Deponent; and was agreed to. But afterwards, it being moved, and inſiſted on, that, if the Arms were delivered into the Caſtle, they could expect no Capitulation or Terms, the Reſolution of delivering them into the Caſtle was altered. After which, ſuch of the Members of the Council as were in the Meeting, went to the Goldſmiths Hall; where, and in the Council-chamber, they remained all Night. Depones, That, at the Meeting in

the Goldſmiths Hall before that in the New Church Iſle, and at the ſaid Meeting in the New Church Iſle, there was an Offer of Dragoons made to the Pannel twice, once by Mr. *Groſſet*, and another time by Mr. *Lindſay* Secretary at War; to one of which, (he thinks it was to Mr. *Lindſay* in the New Church Iſle, who preſſed the Offer much upon the Pannel), he anſwered, If the commanding Officer would ſend in Dragoons, he might do it; but he the Pannel would give no Orders for that Purpoſe. The other Offer by Mr. *Groſſet*, which he alſo preſſed much, and which the Deponent thinks was the firſt, being made in the Goldſmiths Hall, the Pannel refuſed to accept of. Depones, That, at the Meeting in the New Church Iſle, there was a Letter from the Pretender's Son brought in, in what manner he knows not, further than it was ſaid to be handed in from the Door: And the firſt Time he ſaw it, was in the Hands of Deacon *Orrock*; who broke it open, and looked at the Subſcription, and was going to read it; but, a Cry being made againſt reading it, the Members of the Council inſiſted it ſhould not be read; and the Pannel forbid it to be read. And it was not read at that Time; but it was read in the Goldſmiths Hall, to which, as ſaid is, the Pannel and the Council retired. That, upon reading this Letter, it was propoſed what kind of Anſwer ſhould be made to it: And it was moved, that the Advice of the Aſſeſſors ſhould be taken upon it. That they were accordingly ſent for; but none of them were in Town, except Mr. *Patrick Haldane*; who came down to them a little, but declined to give any Advice. And, in Explication of what he has already ſaid,

depones,

depones, That the Motion for ſending for the Aſſeſſors, aroſe upon a Propoſal which had been made, That the City ſhould capitulate or ſurrender upon Terms; and that the Pannel having aſked at ſeveral of the Council, if they would go and capitulate? which they declined to do, it was then, or about that Time, that the Motion for taking the Advice of the Aſſeſſors was made. That Mr. *Haldane* was ſent for, and came; and then one of theſe two Things was propoſed to Mr. *Haldane* to give his Advice upon, Either what was proper to be done in the preſent Juncture in general, or what ſhould be done in relation to anſwering the ſaid Letter, he does not remember which; to which he thinks Mr. *Haldane* ſaid, *Theſe Things are too difficult for me to give any Opinion of*; and thereupon roſe from his Seat, and walked off: but does not remember if the Letter was read or ſhown to Mr. *Haldane*. That afterwards the Pannel changed the Terms of his Propoſal; and ſuggeſted, that it might be proper to ſend out ſome of their Number, to gain Time: And a Committee of the Council, of four, was appointed to go, whereof the Deponent was one; and their Inſtructions were, to call only for ſuch of the Gentlemen in the Rebel-army as they were acquainted with; and to propoſe to them, if they would ſend ſome of their Number into the City, to tell what they propoſed to have done; and to aſſure, upon the Part of the Pannel, ſuch as ſhould be ſent in, that they ſhould be allowed to return ſafely. That the ſaid Deputation accordingly went out; and the Paper, marked N° 2. ſigned and ſealed by *John Murray* the Pretender's Son's Secretary, now exhibit and ſhown to the Deponent, was gi-

a Regiment of 300 Men, and he was ſure that the City of *Edinburgh* could raiſe 1000; but the Pannel ſeemed to laugh at the Propoſal, believing that Money could not be got to pay them; and ſaid to the Deponent, You remember, *John*, that, upon a certain Occaſion, we could not raiſe a ſmall Sum for a particular Purpoſe; and how do you imagine we ſhould be able to maintain 1000 Men? He added further, That they could not raiſe ſuch a Body of Men, without being guilty of Treaſon, unleſs they had the King's Sign-manual. To which the Deponent anſwered, That he knew that very well; but, if that were applied for, it might be got. Depones, That the Meeting of the Inhabitants was not called till the *Tueſday*; and then it was held in one of the Church Iſles, where two or three hundred Burgeſſes were preſent, and the ſame Propoſal was again made of raiſing a Regiment of 1000 Men; and ſeveral other Propoſals were made for putting the City into a Poſture of Defence. That the Pannel did not ſeem to oppoſe any of theſe Propoſals. That it was agreed by the Meeting, to apply to the Crown-lawyers to procure his Majeſty's Sign-manual for raiſing the Regiment; and alſo, to take their Opinion concerning certain Voluntiers who offered their Service. Depones, That, in that Meeting, the Pannel, who preſided in it, directing his Diſcourſe to the Deponent, ſaid, in a joeular Way, *John*, this is your Meeting. To which the Deponent anſwered, My Lord, I am not aſhamed of it. Depones, That, after the ſaid Meeting, a Petition was drawn up, to be ſigned by ſuch of the Inhabitants as were ſo diſpoſed; praying the Magiſtrates and Council's Allowance to aſſociate themſelves as

Voluntiers

Voluntiers in defence of the City; and ſeveral different Copies of the ſame Petition were left in the New Church Iſle, to be ſigned, from Time to Time, by ſuch of the Inhabitants as inclined: And the Petition in the Clerk's Hands, now ſhown to the Deponent, being the 5th in the Liſt of Writings ſubjoined to the Criminal Letters, is the Petition that was ſigned by this Deponent. That, when they had got about two hundred Subſcriptions, a Committee of four or five of them were ſent to the Pannel, to deſire he would be pleaſed to name their Officers: That the Deponent and Bailie *Nimmo* were two of thoſe who were ſent: That they thought the Pannel was very dilatory in naming their Officers. That the Deponent himſelf applied two or three different Times to him for that Purpoſe; and ſeveral Days interveened betwixt the firſt Application, and his naming any of them; and, at laſt, he named the Captains, and allowed them to name their Subalterns: But it was then but about ten Days before the Rebels got Poſſeſſion of the Town. And, being interrogate for the Pannel, depones, That they had ſeveral Meetings in the New Church Iſle with the Pannel; and he doubts not but the Pannel may have named the Captains on *Saturday* the 7th of *September*, though the Deponent cannot be certain of the Day of the Week or Month; but is ſure, that a Liſt had been given to the Pannel, out of which he might name theſe Captains, five or ſix Days before he named them. And, being further interrogate for the Pannel, depones, That it was underſtood, that the Field-officers were to be named, not from among the Voluntiers themſelves, but proper Perſons to be found who were more ſkilled

led in military Affairs. Depones, That there were many Complaints, that the Reparation of the Town-walls went on very ſlowly; and particularly remembers, that that Part of the Wall which ſeemed moſt dangerous, to wit, at the College Kirk, and from the New Port to *Leith* Wynd, was not repaired or barricaded till *Monday* the 16th of *September*, the very Day before the Rebels entered the Town: And the Deponent, on that *Monday*, went to the Council himſelf, and complained; and got proper Warrants to preſs Workmen; one whereof was ſigned by Bailie *Robert Baillie*: And another of the Volunteers got a Warrant, ſigned by Bailie *Mansfield*. That Bailie *Robert Baillie* was the Second Bailie that Year; and the Second Bailie is called *The Bailie of the publick Works*; becauſe, by his Office, he has the Overſight of theſe Works. That the Deponent had ſeveral times complained to the Pannel, and others of the Magiſtrates, that theſe Works went on very ſlowly: And particularly remembers, that he once complained to the Pannel himſelf on that Account; and the Pannel anſwered, That he had given Orders to Bailie *Baillie* about the Works, and Power to preſs Workmen. But depones, That, about that Time, the Election of the Deacons was going on, which happened upon a *Saturday*; and then the Work went much ſlower on than at other Times; and the Trades-people were ſo taken up about their Elections, that the Deponent believes it was hardly in the Power of the Pannel or Magiſtrates to get the Tradeſmen to work. And being further interrogate for the Pannel, Whether that Part of the Wall above deponed upon, at the College Kirk, and from the New Port to *Leith* Wynd, was not

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ſo far repaired before the 16th of *September*, that the Breaches were made up, and the Parapet built, ſo that nothing was wanting, but the barricading the Ports? depones, That it was another Perſon, and not the Deponent, who was employed to ſee that Part of the Repairs made on the 16th; and therefore the Deponent cannot with Certainty anſwer the Queſtion: But knows, that theſe Ports had not been barricaded as ſome of the other Ports of the Town had been, (which was all the Deponent meant in the former Part of his Oath on this Article); and knows that a great many Hands were got, and a great deal of Work done that Day; and the Tradeſmen themſelves ſaid, That they had done more that Day than for ſome Days before. Depones, That the Deponent was preſent at a Meeting that ſeveral of the Burghers in Town had with the Pannel in the Houſe of Mr. *Wilſon* Taverner in *Edinburgh*; and which Meeting was held in conſequence of a Requeſt made by ſome of theſe Burghers, that the Pannel ſhould meet with them: And there were preſent at the Meeting a good Number, the Deponent cannot be poſitive how many; but there were, he thinks, twenty, or thirty, or forty of them: And that Meeting deſired of the Pannel, that he would diſcriminate the Trained Bands one from another, and put Arms only in the Hands of ſuch as were known, by the old Burghers, to be well affected to the Government: But the Pannel ſaid, That that was too delicate a Point for him to meddle with. And being interrogate for the Pannel, depones, He knows nothing of that Propoſal's being made to the Council. Depones, That he knows there came in ſeveral Vo-

luntiers from *Muſſelburgh* and *Inverèſk*, along with Sir *Robert Dickſon*; and another Body of Voluntiers from *Dalkeith*, under the Command of Mr. *Lewis Douglas* Advocate, and Dr. *Tait*. That the Deponent knows nothing of their Reception by the Pannel, further than that the Body that came from *Dalkeith*, on *Saturday* the 14th, were lodged in the High School, and ordered to keep Guard at the High School Yards; but were not joined to any other Body of Troops till *Monday* at Two o'Clock Afternoon, that the Deponent went to the Pannel's Houſe, and propoſed that they ſhould be joined to ſome other Company: And the Pannel deſired him to join them to any Corps that he thought proper; and the Deponent accordingly joined them to that Company of Voluntiers where he himſelf ſerved, and which was commanded by Sir *George Preſton*. Depones, That, in the Afternoon of *Monday* the 16th of *September*, as the Deponent was keeping Guard at the *Netherbow* Port, he was informed, that there was to be a Meeting of the Inhabitants in the New Church Iſle; and it was reported that the Town was to be delivered up: Upon which the Deponent aſked Leave of his Captain, Sir *George Preſton*, to go to ſee what was doing. That the Deponent came, and found the Pannel, and moſt of the Magiſtrates, with ſeveral of the Inhabitants, in Goldſmiths Hall. That the Deponent ſaid to the Pannel, What, are you going to give up the Town, when we have thirteen hundred Men in Arms, that are ready and willing to defend it to the utmoſt? To which it was anſwered, either by Mr. *Lauder* the Surgeon, or by Mr. *Orrock*, Your Champion Mr. *Williamſon* has given up the Defence of the Town;

Town; and do you pretend to hold it out? The Deponent replied, That he would not believe that, unleſs he had it from Mr. *Williamſon*'s own Mouth; for none but a Coward, or a Jacobite, would give it up. Upon which Mr. *Williamſon* appeared, and ſaid, He was willing to hold it out to the utmoſt, if his Men would ſtand by him; but that he had not above ten or twelve Men that appeared where they ſhould have been. And the Deponent ſays, Mr. *Williamſon* was Lieutenant to a Company of *Edinburgh* Voluntiers. That he knows not what the Number of that Company was; but that he believes it was fifty, ſixty, or ſeventy Men. That the Deponent then aſked the Pannel, What he was reſolved to do? And he ſaid, That he would take the Advice of his Brother-burgeſſes. That, about this Time, Mr. *Groſſet* came into the Meeting with a Meſſage from ſome of the Crown-lawyers, offering the Dragoons for the Defence of the City, if the Provoſt would order them: And the Pannel anſwered, That he would give no Orders; but that, if they were ſent in, he would receive them. Depones, That Mr. *Laurence Dundas*, being in the Meeting, inſiſted, that the Pannel, as Provoſt, ſhould give the Orders for bringing them in: That the Pannel repeated his former Anſwer; and Mr. *Dundas*, or ſome one of the Meeting, ſaid, That, if he refuſed, he behoved to anſwer for it, if the Town was given up. Depones, That the Deponent was ordered by the Pannel to his Poſt at the *Netherbow*; and that Inſtant, or in a very little Time, the Fire-bell rung; ſo that the Deponent was not preſent at the Meeting in the New Church Iſle. Depones, That, upon the Deponent's Return

to the *Netherbow*, he acquainted Sir *George Preſton* of what had paſſed; who thereupon immediately left him, to go to the Meeting; and did not return for half an Hour or an Hour; during which Time the Deponent knew nothing of what was doing. That, upon Sir *George*'s Return, he ordered the Deponent, and the reſt of the Company, and another Company, alſo upon Guard there, to march to the Alarm-poſt, which was in the *Lawn-market*. That, when they came to the Croſs, they got Notice, that the other Companies of Voluntiers had gone to the Caſtle, and delivered up their Arms; and, when they came to the Alarm-poſt, finding none of the Voluntiers there, they alſo marched up to the Caſtle, and delivered up their Arms; and thinks it was then about Sun-ſetting. Depones, That the thirteen hundred armed Men that he mentioned to the Provoſt, as above deponed, were compoſed of the City-guard, the *Edinburgh* Regiment, the *Edinburgh* Voluntiers, the Seceders, the *Inverеſk*, *Muſſelburgh*, and *Dalkeith* Voluntiers. That the Deponent cannot, from his Memory, now ſpecify the particular Number of each Corps: But he is ſure, that, at that Time, he did compt them, and they did amount to the foreſaid Number; and were all well armed with Guns, Swords, and Bayonets. Depones, That, by compting, the Deponent means no more than adding the Numbers of the ſeveral Corps as reported by their Officers.

XIV. *Walter Groſſet*, late Collector of the Cuſtoms at *Ailoa*, now one of the General Inſpectors of the Cuſtoms of *Scotland*, depones, That, upon *Monday* Afternoon the 16th of *September* 1745.

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as the Deponent was coming to Town in Company with Lord Juſtice-Clerk, they met ſeveral People coming full ſpeed out of Town; who informed them, that the Rebels were by that Time at the Weſt Port. That thereupon Lord Juſtice-Clerk ſent the Deponent with a Meſſage to the Pannel, then Lord Provoſt of the City, while at the ſame time the Lord Juſtice-Clerk himſelf rode to meet the Dragoons, who were then a Mile North-eaſt of the City of *Edinburgh*: That the Meſſage to the Pannel was, to know whether he was reſolved to defend the City of *Edinburgh*; to preſs his defending it; and to aſſure him, if he was to defend it, he ſhould have a hundred Dragoons, or as many as he pleaſed to deſire; and to get the Pannel's Anſwer. That the Deponent, in his Way to the Town, met the then Lord Advocate, to whom he reported the Meſſage he was ſent with; who approved of it, and preſſed him to haſte to deliver it. That the Deponent found the Pannel in the Goldſmiths Hall, with ſeverals of the Magiſtrates and Council, and other Perſons, it being then betwixt Three and Four Afternoon; and the Deponent delivered his Meſſage to the Pannel in the above Terms, as from both the Lord Juſtice-Clerk and Lord Advocate. That the Pannel ſhifted to give a direct Anſwer to the Meſſage: And, being preſſed to it by ſeverals of the Meeting, he at laſt made a Speech; in which he ſaid, He would do nothing unworthy of the Station which he was in: He urged the Uncertainty of Sir *John Cope*'s coming to their Relief, and the Danger of the Lives and Properties of the Inhabitants; and concluded, That he was againſt defending the Town; but ſaid

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he would be adviſed by his Council. And being interrogate for the Pannel, What were the Expreſſions that imported his being againſt the Defence of the Town? depones, That he cannot remember the particular Words; but the whole Purport of his Speech tended that way. Depones, That, as there were ſeveral Altercations betwixt the Deponent, as well as other Perſons preſent, and the Pannel, the Deponent deſired an Anſwer in Writing: Which the Pannel declined to give, ſaying, That the Deponent was very capable to return a verbal Anſwer. That the Deponent ſtill inſiſted for an Anſwer in Writing; and the Pannel repeated the ſame Anſwer. Then the Deponent ſaid, He could make nothing elſe of the Pannel's Anſwer, but that he refuſed to defend the Town, and admit the Dragoons. And, upon that, the Pannel agreed to give him a written Anſwer; and believes might have ſaid, That the Deponent miſtook him. That the Pannel accordingly gave the Deponent an Anſwer in Writing, directed to the Lord Advocate and Lord Juſtice-Clerk. And being ſhown the Letter in the Clerk's Hands, produced in this Trial by Mr. *Craigie*, a preceeding Witneſs, depones, That that Letter is the Anſwer he then got from the Pannel. Depones, That, upon receiving that open Letter, and reading it, he ſaid to the Pannel, That he had already aſſured him from Lord Advocate and Lord Juſtice-Clerk, that it was their Opinion that he ſhould defend the Town; and that he ſhould have a hundred, or as many Dragoons as he ſhould deſire, to aſſiſt in the Defence of it; and that he muſt anſwer for the Conſequence of that unneceſſary Delay. Upon which the Pannel left the Meeting, and the Deponent

ponent came off with the written Anſwer. Depones, That, at the above Meeting, in anſwer to what the Pannel had ſaid of the Uncertainty of Sir *John Cope*'s coming in Time, the Deponent ſaid, That as they had certain Advice, that Sir *John Cope*, and the Troops, were at *Aberdeen*, and were to imbark for *Leith*, they had Reaſon every Hour to look for their Landing. Depones, That, at the ſame Meeting, ſome of the Company, and, the Deponent thinks, Capt. *James Murray*, ſaid, That, if the Town was not to be defended, it was neceſſary that Care ſhould be taken of the Arms in it, ſo as they ſhould not fall into the Hands of the Rebels: And, as the Deponent underſtood it, that Speech was directed to the Pannel, as was every thing elſe ſpoke out in that Meeting, in which he preſided; but the Pannel made no anſwer to it. Depones, That the Deponent returned from that Meeting to the Lord Juſtice-Clerk's at *Brunſtaine*, and ſhowed him the aforeſaid written Anſwer. That the Lord Juſtice-Clerk ſent him immediately with it to the Lord Advocate, and Brigadeer *Fowkes*, then at *Muſſelburgh*. That the Deponent delivered the ſaid written Anſwer to Lord Advocate. That by that Time Lord Advocate had got Advice by two Letters from *Dunbar*, of the Arrival of Sir *John Cope* with the Tranſports, and Troops under his Command, off that Place; and Lord Advocate inſiſted, that the Deponent ſhould immediately return to *Edinburgh*, and ſhow the Pannel thoſe Advices he had got; and at the ſame time wrote a Letter, certifying, that theſe Letters carried by the Deponent were the original Letters carrying the Account of Sir *John Cope*'s Arrival. That the Deponent forthwith

with ſet out from *Muſſelburgh*, it beginning then to grow dark, and came with all the Speed he could make to *Edinburgh*; and found the Pannel, with his Council, in the Council-chamber, and put into his Hands the Lord Advocate's Letter, with the foreſaid Letters of Advice. That the Pannel, upon reading them, ſaid, They were come too late; for they had agreed to capitulate, and had ſent ſome of their Number to treat about the Terms; and at the ſame time reached to the Deponent a Letter, which, upon opening it, the Deponent found to be ſigned, *Charles P. R.* and is the ſame Letter mentioned in the firſt Article of the Liſt of Writings ſubjoined to the criminal Letters; the ſame being now ſhown to the Deponent. Depones, That the Deponent then propoſed, that as probably the People ſent out to the Rebel-camp could not by that Time be got the Length of the Camp, a Meſſenger ſhould be immediately ſent to bring them back; which the Pannel agreed to, and it was done accordingly. That, about that Time, Provoſt *Drummond* came into the Council-houſe, and he and Provoſt *Macaulay* inſiſted, that they ſhould then reſume the Defence of the Town; that, for that End, the Fire-bell ſhould be rung, that being the Signal for conveening the Inhabitants, or bringing them to their Poſts. That the Pannel anſwered, That they muſt be tender of the Blood of their Fellow-burghers: That, ſhould they ring the Alarm-bell, the Rebels might hear it; and ſhould thoſe of their Number, who were ſent out to treat with them, be arrived at the Camp, they might hang them, or uſe them ill; or Words to that Purpoſe. That ſome others in the Meeting ſaid the

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ſame thing; particularly Dean of Gild *Hathorn*, as the Deponent thinks, but cannot be poſitive. Depones, That ſome of the Company, the Deponent thinks Provoſt *Drummond*, anſwered, That the City ought not to lay down their Arms till the Treaty was concluded; and the preparing for their Defence, was the beſt Way for obtaining good Terms; And, at the ſame time, propoſed, that, if they did not incline to ring the Fire-bell, a Bank might be ſent through the Town, (by which the Deponent underſtood beating a Drum), or any other Method, for bringing the Inhabitants together. To which the Pannel anſwered, That that was a Matter of too great Importance for him to take upon him by himſelf, for he would be determined by his Council. That Provoſt *Drummond* ſaid to the Pannel, That he was the Perſon that muſt give the Orders, and muſt anſwer for them; and the Council had nothing to do in it. Depones, That the Council, at leaſt ſeverals of them whom he knew, were preſent in the Meeting, but none of them ſpoke. That then the Pannel was going to leave the Chair; but ſome of the Council, inſiſted that he ſhould keep it; which he did accordingly. Depones, That thereafter the Pannel, and ſome others of the Council, particularly, as the Deponent remembers, *Mark Sandilands*, urged, that the Town was not defenſible. To which the Deponent anſwered, That he well knew the Situation of the Town, and likewiſe knew the Condition of thoſe who were to come againſt it, who had no Cannon, and were very ill armed; and that he would undertake to be one of fifty to defend the weakeſt Part of the Town. And ſome of the Council joined the

Deponent, particularly one Mr. *Currie*, who offered to make one of the fifty, and to find the reſt of them within the Town. That thereupon the Pannel ſeemed to come to a Reſolution to defend the Town, provided Gen. *Gueſt* would give them what Arms were neceſſary. That the Deponent offered to go to Gen. *Gueſt*; and that the Pannel might be ſatisfied, that he did not miſtake or miſrepreſent his Meſſage, deſired that one of the Council, who the Pannel could confide in, might be ſent alongſt with him; and accordingly Provoſt *Coutts* was ſent. That, upon delivering the Meſſage to Gen. *Gueſt*, he expreſſed his Satisfaction with the Reſolution of defending the Town; aſſured them they ſhould want no Aſſiſtance that was in his Power to give them; and that how ſoon they ſhould diſtribute the Arms properly belonging to the City, they ſhould have what more Arms they had uſe for: That he had already given Orders to ſpike up the Cannon on the City-walls, and beat off the Trunnions; but that now he would countermand theſe Orders. And, being interrogate for the Pannel, depones, That no Part of the Meſſage, ſent by the Pannel to Gen. *Gueſt* by his Hands, was touching the Dragoons; neither did the Deponent make any Propoſition to the General relating to them. Depones, That, upon Provoſt *Coutts* and the Deponent's Return from the Caſtle to the Council-chamber, the Pannel told the Deponent, That, as the Meſſenger they had ſent after their Deputies had not overtaken them, the Council were come to a Reſolution not to defend the Town: And the Council, at leaſt ſeverals of them known to the Deponent, were preſent at the Time. Depones, That thereupon

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It was proposed, and, as the Deponent thinks, by Provost *Drummond*, That, if the Town was not to be defended, Care at least should be taken to secure the Arms, that they should not fall into the Rebels Hands. Upon which the Pannel reached to Provost *Drummond* the before mentioned Letter, signed *Charles P. R.* by which, he said, Mr. *Drummond* would see, that if the Arms were put out of the Way, the Highlanders would plunder the Town. To which Provost *Drummond* answered, That if the Town should furnish the Rebels with Arms to fight against the King's Troops, had they not Reason to expect, that when the Town should be retaken by the King's Troops, they would look upon the Town as Enemies, and use them as such? That thereupon the Deponent insisted to have the Pannel's Answer in Writing to the Message he had brought him from Lord Advocate. To which the Pannel answered, That he had already put too much in Writing that Day, and he would write no more upon the Subject. And thereupon Provost *Drummond* and the Deponent came away. And being interrogate, Whether, at this Time, when he left the Pannel in Council, he did not say, he was going to bring in the Dragoons? deponed, That he was so far from saying so, or intending it, that had he met the Dragoons coming in, he would have turned them back, in respect of what had passed in his last Conversation with the Pannel.

XVI. Mr. *Lewis Douglas*, Advocate, depones, That betwixt Two and Three o' Clock Afternoon of *Sunday* the 15th *September* 1745, the Deponent, and one Mr. *Tait* a Physician in *Dalkeith*, came

with 47 Men, being, as the Deponent thinks, all Inhabitants of *Dalkeith*, to offer their Service to Provoſt *Stewart*, to aſſiſt in the Defence of the City of *Edinburgh*, againſt the Rebels. That, in their Way to *Edinburgh*, Mr. *Tait* left the Deponent with the Men, in order to find out the Pannel, to get Arms for them. But, about Six o Clock, Mr. *Tait* returned to the Deponent; and told him, That the Pannel ſaid he had no Arms to give them; and that, upon this, Mr. *Tait* had applied to the then Lord Advocate; who told him, that it would be neceſſary for him to draw a Petition, addreſſed to him the Lord Advocate: Which Mr. *Tait* accordingly did; and the Lord Advocate ſubjoined a Recommendation on the Foot of the Petition, directed to Gen. *Gueſt*. Which Petition and Recommendation being preſented by Mr. *Tait* to Gen. *Gueſt*, Gen. *Gueſt* granted a Warrant upon Mr. *Lyon* Storemaſter, to deliver to the Deponent, and the Men that came alongſt with him, 50 Stand of Arms, a Barrel of Ball, and a Barrel of Powder: And that about Six or Seven o Clock they were accordingly received. Depones, That Mr. *Tait* informed the Deponent, that when he Mr. *Tait* converſed at firſt with the Pannel, and was told, as above, by the Pannel, that he had no Arms to give the Men who were coming from *Dalkeith*, Mr. *Tait*, upon that, aſking, If the Men might notwithſtanding come into the Town of *Edinburgh*? the Pannel ſaid, They ſhould be very welcome. That, upon their Return from the Caſtle, the Deponent, with the Men that came alongſt with him, went to the Parliament-cloſe; where they remained, until that Mr. *Tait*, who had gone in ſearch

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of the Pannel, ſhould receive Orders from him, both as to their Quarters, and the Place of the Town which they were to defend. That it was ſome time before Mr. *Tait* returned: And when he returned, he told the Deponent, That the Pannel declined for ſome time to give any Orders; but at laſt, by the Interceſſion of Provoſt *Drummond*, the Quarters which were allotted for them, was the High School, and the Place of the Town they were to defend, was from the *Cowgate* Port to the Back of the Infirmary. That they remained there, and kept Guard all Night: But in the High School, where their Quarters were allotted them, they had neither Meat, Coal, or Candle. Depones, That, betwixt One and Two o' Clock, as the Deponent thinks, the Pannel made his Grand Round: And that then the Deponent, with his Men, turned out their whole Guard to him. That he is poſitive the Pannel did not ſpeak to him; and, ſo far as he remembers, he did not ſpeak to any of the Men: And that Mr. *Tait*, with a Party of 16 Men, eſcorted him from their Guard to the next Guard. Depones, That a Meſſage coming to Mr. *Tait* about Twelve o' Clock of *Monday* the 16th of *September*, giving an Account that his Wife was dangerouſly ill, and who accordingly died that Day, Mr. *Tait* was obliged to leave the Town, and the Command of the Men wholly upon the Deponent: And the Deponent having gone to wait of the Pannel, to acquaint him of what had happened to Mr. *Tait*, and to deſire that the Pannel might appoint ſome proper Perſon to command the Men who came alongſt with the Deponent in conjunction with himſelf; the Pannel made anſwer, That your Men were in ſo good Order laſt

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Night, that I don't think you ſtand in need of any Aſſiſtance; but if you know of any proper Perſon, you may name him, and I'll appoint him. Upon this, Bailie *Wilſon* came in, and told he was very glad to ſee the Deponent with the Pannel; for it was upon the ſame Errand he was come to ſpeak to him, to know how theſe Men were to be quartered. The Provoſt's Anſwer was, That he had ſo many Things in his Head, and was ſo much hurried, that he deſired the Bailie might give Orders thereanent himſelf. Depones, That, betwixt Ten and Eleven of the *Sunday* Night, Bailie *Wilſon*'s Wife ſent to the Deponent and Mr. *Tait*, deſiring that they might come and eat ſomething with her. They accordingly went; and, when in her Houſe, ſhe ſaid ſhe was ſorry they had been ſo little taken notice of. That the Deponent and Mr. *Tait* were a good deal ſurpriſed, that none of the Magiſtracy, or thoſe who had the Direction of the Affairs of the Town of *Edinburgh*, came near them; conſidering the Place which they were ſet to guard, and which, in the Deponent's Apprehenſion, was of very great Importance to the Town of *Edinburgh*. This made the Deponent believe, and ſay to Mr. *Tait*, That the Defence of the Town was altogether a Joke; and that he would return next Morning back to *Dalkeith*. Mr. *Tait*, in anſwer to this, ſaid, That he was wrong in thinking in that Manner: For ſuch a Piece of Conduct would appear fooliſh, if they ſhould come the one Day and return the other: And beſides, if they acted a Part becoming themſelves, they were not anſwerable for the Conduct of others. And being interrogate for the Pannel, How they were provided in Meat, Drink, Coal, and Candle,

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the Time they remained in the Town of *Edinburgh*; and when it was they left it? depones, The whole Time they remained in *Edinburgh* they were obliged to provide for themſelves. And, upon hearing the Fire-bell ring upon *Monday* Afternoon, he immediately ſent up to know what was the Matter: And the Perſon he ſent, meeting with *James Carmichael*, Writer to the Signet; Mr. *Carmichael* ſent the Deponent Word, that it was his Buſineſs to march up his Men forthwith to the *Lawn-market*. And the Deponent upon this imagined, they were immediately going out to fight the Rebels; and therefore marched up his Men, without Loſs of Time, to the *Lawn-market*. And when he came there, he found the Voluntiers all coming down from the Caſtle, after having delivered up their Arms. Upon which the Deponent marched up his Men to the Caſtle, and delivered in his Arms alſo. And, upon this, the Men got Ladders, ſcaled the Walls, and went to *Dalkeith* that Night; but he himſelf ſtaid in the Town all that Night.

XVI. Mr. *John Tait*, Doctor of Medicine in *Dalkeith*, depones conform to the preceeding Witneſs, in ſo far as concerns the Facts which happened while the Deponent was in the Town of *Edinburgh*; with this Variation, That he does not remember that he uſed the Word *declined* to Mr. *Douglas*, when he was giving him an Account of the Orders he then received from the Pannel with reſpect to the Mens Quarters who came alongſt with him, and the Place of the Town they were to guard; but he told Mr. *Douglas*, that the Pannel delayed giving Orders for ſome time. Neither does

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he remember, that he uſed that Expreſſion to Mr. *Douglas*, *That it was by the Interceſſion of Provoſt Drummond that the Orders were then procured*; but told him theſe Orders were wrote by Provoſt *Drummond*, and ſigned by the Panuel. Nor does the Deponent remember the Expreſſion which Mrs. *Wilſon* had to Mr. *Douglas* and the Deponent upon their not being ſo much taken notice of as they ought to be; but remembers there was then ſome ſuch Expreſſion by ſome of the Company.

XVII. *Archibald Macaulay*, Eſq; late Lord Provoſt of *Edinburgh*, depones, That he reſided in the Town of *Edinburgh* in the Months of *Auguſt* and *September* 1745, when Accounts were brought that the Pretender's Son was landed in the Weſtern Iſlands, and that he was marching with a Body of Rebels Southward. That the Deponent, being in the Town of *Edinburgh* in the Year 1715, obſerved then a Zeal and Warmneſs in the Inhabitants, which proceeded from that Diſpoſition appearing firſt in the Magiſtracy, and which ſoon ſpread itſelf among the other Ranks of People. That the Method taken at that Time for the Defence of the City, was by Pariſh-guards, there being 400 Voluntiers, who had aſſociate themſelves together beſides, and who were very well diſciplined before the Rebels came then near to the Town. That the Trained Bands were laid aſide, as being a promiſcuous Set of People, whereof many were diſaffected; and the Care of the Town was given, in place of them, to the Pariſh and City Guards, in whoſe Hands Arms were put, as being known to be People well affected to the Government. That, upon the

the late Rebellion, the Deponent did not obſerve, in the Town of *Edinburgh*, ſuch a Keenneſs and Zeal for the Support of his Majeſty's Government; and at this Time nothing but Coldriſeneſs [*i. e.* Lukewarmneſs]: But hearing that the Rebels intended to come to the Town of *Edinburgh*, although at firſt it was reported they intended to paſs another Way, the Deponent met with ſome other well-affected People of the Town, and expreſſing his Concern for the Welfare of it, they propoſed the raiſing of a Regiment of 1000 Men, and to get ſome People to aſſociate themſelves into Companies of Volunteers, as was done in the 1715. The Pannel about this Time did call a Meeting of the principal Inhabitants of the Town of *Edinburgh*, to conſult what was proper to be done then; And at that Meeting it was agreed, That a Committee of the Town-council, in Conjunction with ſome other of the Citizens, ſhould wait upon the Lord Advocate, Juſtice-Clerk, and other People about the Town of Diſtinction, and conſult with them, both as to the Legality and Expediency of raiſing the Regiment of 1000 Men, and aſſociating ſome Companies of Volontiers. That, in this Meeting, there were ſeveral Difficulties ſtarted, and even amongſt the Lawyers; but they all agreed in this, that they could not ſet about the levying of the Regiment of 1000 Men, without procuring firſt from the Regents a Warrant for that Effect. Upon this, ſeverals of the Meeting preſſed, that an Expreſs ſhould be immediately diſpatched, in order to procure it: But the then Lord Advocate ſuggeſted, they would appear ridiculous, if they ſhould obtain any ſuch Licence, when, at the ſame time, they were not

aſcertained of the Money that was ſufficient to pay the Regiment. Upon this it was propoſed at that Meeting, that the Provoſt ſhould make a Trial how the Money ſhould be raiſed: And the Provoſt ſuggeſted, that the proper Method for doing this would be, by recommending it to the Miniſters and Kirk-ſeſſions. Againſt which Propoſal no Objection then was made. That the Meeting upon this broke up. And the Magiſtrates and Council accordingly recommended it to the Miniſters and Kirk-ſeſſions to make a Trial how the Money could be raiſed. But the Miniſters, upon receiving the Warrants for ſo doing, objected to the Warrants as not being properly ſigned by the Town-Clerks. But the Deponent, and ſome others of the Inhabitants, hearing that the Miniſters made this Scruple, met together, and called for their Stent-books, and made out a Liſt of ſuch People as they thought would willingly contribute for the Support and Maintenance of the Regiment: And, upon conſidering the ſaid Liſt, they were of Opinion, there would be no Difficulty of raiſing a Sum ſufficient for that Purpoſe. That next Day, the Deponent coming to the *Street*, he met with the Pannel, who, it would appear, had by that Time got notice that the Deponent, and ſome others, had been making out the above Liſt; and told the Deponent, That he found ſome People were taking a good deal upon them; that, as he was Provoſt of *Edinburgh*, he would maintain it; and although he had a great Regard for the Conſtitution of his Country, he had alſo a Regard for the Honour of the Magiſtrates, and Liberties of the Town of *Edinburgh*; and that no body ſhould

wreſt

wreſt the Dignity of Provoſt out of his Hands; And this he ſeemed to ſay in a Paſſion. To this the Deponent made Anſwer, That there were three of his own Magiſtrates in Company; and they only propoſed to do that in a more expeditious manner, which he himſelf wanted to have done; That the Forenoon of that Day, as the Deponent thinks, he met Mr. *William Alexander* Merchant; and, talking of the Payment of the Regiment of the thouſand Men, how it was to be aſcertained, Mr. *Alexander* ſaid, 'Why ſhould there be any occa-'ſion of Delay on that account? I am willing to 'give my Bond for *L.* 3000, if any body will join 'with me;' and the Deponent made anſwer, That he was not a very rich Man, but he would join with him. Upon this they both agreed to go up to the then Lord Advocate, and tell him ſo much; which, after they had done, the Advocate told them, That he could only tranſact with the Magiſtrates; but he was very glad to hear of their Propoſal, and he would immediately write about it: As he was then juſt ſending off an Expreſs, and had wrote his Letter, he then added a Poſt-ſcript to it; which in Subſtance was, telling the Offer that had been made by two Citizens of the Town, which he thought were good for *L.* 3000, and deſired therefore, that the Warrant or Order, for levying the Regiment might be forthwith ſent down. Depones, That, two or three Days before the Rebels came to the Town of *Edinburgh*, the Deponent remembers to have heard ſome Propoſals made to the Pannel, for ſearching the Inhabitants Houſes for Arms: And, upon theſe Occaſions, he heard the Provoſt always ſay, That there ought to

be no Diſtinction made, but all Houſes ſearched without reſpect of Perſons; but the Deponent does not remember to have heard of ſuch an Order granted. Depones, That he happened to be with ſome others, in Mrs. *Clark*'s Houſe, where the Provoſt and Mr. *Maclaurin* were preſent; and it was then propoſed, That the City-walls ſhould be put in ſome tolerable Poſture of Defence: And Mr. *Maclaurin*, at that Meeting, produced a Scheme of what was neceſſary for that Purpoſe. To which the Pannel agreed; but made ſome Difficulty with regard to the Expences that were neceſſary for doing ſuch a Work. The Deponent thinks, that the Provoſt might in this have acted a prudent Part for the Town of *Edinburgh*; but the Deponent thought this ought at that Time to have occaſioned no Delay; and Mr. *Maclaurin* ſaid ſo too. Depones, That he heard the Reverend Mr. *Alexander Webſter* once and again make a Propoſal to the Pannel in the Council-houſe, where there were a good many of the Council preſent, and a great many other Inhabitants, of raiſing, upon his own Credit, 500 Guineas, to be diſtributed to five hundred of the ableſt bodied Journeymen of the ſeveral incorporated Trades in the Town; who, as they were very bold and hardy in the extinguiſhing of Fire, he believed would willingly undertake to mount the City-walls, and aſſiſt in the Defence of them, in caſe they ſhould be attacked by the Rebels, and judged them much more proper for that Purpoſe than the Volunteers were. That the Anſwer which the Deponent heard the Lord Provoſt make was, That, if Mr. *Webſter* would undertake to raiſe the Money, he would be Caution that Mr.

Webſter

Webſter would perform it. Depones, That he was preſent, both when Mr. *Lindſay* Depute-Secretary at War, and Mr. *Groſſet* Collector of the Cuſtoms at *Alloa*, made a Propoſal to the Pannel, for bringing into the Town a hundred Dragoons for the Town's Defence; and Mr. *Groſſet* added, If he deſired, even the whole two Regiments, provided that the Provoſt would deſire it in Writing. The Pannel's Anſwer was to both theſe Gentlemen, That if the Dragoons would come into the Town, they ſhould be welcome; but he would ſign no ſuch Deſire. Depones, That he was preſent in the Council-houſe on *Monday* Evening the 16th of *September*; when he heard it propoſed, that there was a Neceſſity for ſecuring the Town's Arms, Ammunition, and Cannon on the Walls, from falling into the Hands of the Rebels: But as there was very great Confuſion that Night, the Deponent does not remember any more of the Matter. Depones, That the Number of his Company, to the beſt of his Knowledge, conſiſted of ſixty or ſeventy; and that Mr. *Joſeph Williamſon* was his Lieutenant.

XVIII. *James Nimmo*, Eſq; late one of the Bailies of *Edinburgh*, depones, That, upon *Monday* the 16th *September* 1745, as the Deponent was upon Guard at the *Netherbow* Port, with Sir *George Preſton* of *Valleyfield*, he received a Meſſage from the Pannel, he thinks between Four and Five at Night, to come and ſpeak with him, and ſome of the Town-council, then in the Goldſmiths Hall. That, when he came there, in obedience to the ſaid Meſſage, he underſtood, the Pannel, his Council,

and

and ſome of the Inhabitants, were engaged in an Argument, what Anſwer ſhould be returned to a Letter which the Pannel had received from the Lord Juſtice-Clerk, or the then Lord Advocate; by which Meſſage an Offer of a hundred Dragoons was made to the Pannel, or more if he pleaſed, to aſſiſt in the Defence of the City. That, after ſome Time ſpent in this Debate, the Pannel obſerved, That a Thorn had been put in his Foot; for that if he ſhould accept of that Offer, and the Town ſhould be taken, he might be charged with having enſnared ſo many of his Majeſty's Troops; and, on the other hand, if he ſhould refuſe to accept of the Offer, he might be blamed, if the Town was taken, for having loſt it by not receiving that Succour. That, in anſwer to this, the Deponent obſerved, That it was an eaſy Matter for the Pannel to put the Thorn in their Foot, by making an Anſwer to this Offer, That if the Lord Juſtice-Clerk or Lord Advocate ſhould think it fit, and for the Service of the Government, to ſend a hundred Dragoons, or the whole of them for the Purpoſe aforeſaid, the Pannel ſhould be ready to receive them; which Expedient the Pannel, and ſeverals of the Gentlemen then preſent, ſeemed to approve of; and the Pannel ſet about writing an Anſwer, as the Deponent imagined, to that Purpoſe: But, when he heard the Anſwer read, he did think it did not fully come up to his Propoſal. Upon which he left the Meeting, and repaired to his Poſt; and, about Five o' Clock, the Alarm-bell rung, the Signal for calling the Voluntiers to repair to the *Lawn-market*: But, before the Deponent left his Poſt, he ſent ſeveral Meſſages to the Pannel, to receive Orders what to do; and to the

third

third Meſſage, he thinks, for the firſt Time, received an Anſwer, to repair to the Alarm-poſt; which accordingly he did: And that he was not preſent at the Meeting in the New Church Iſle, held much about this Time, judging it more his Duty to remain at his Poſt; beſides, he ſaw a great many People crowding into that Meeting, whom the Deponent did not look upon as proper Perſons to conſult with in a Juncture of that ſort, when the Rebels were reported to be at the Diſtance of only about two Miles from the City.

XIX. Mr. *Alexander Webſter*, one of the Miniſters of *Edinburgh*, depones, That the Week before the Rebels got Poſſeſſion of the City of *Edinburgh*, he was preſent at a Meeting in Mrs. *Clark's* with the Pannel, ſome Officers of the Army, and well-affected Inhabitants of the City. That in it the Deponent obſerved, that the Reparation of the City-walls was carried on by much too ſlowly; and that the Tradeſmen ſhould be called to give a Reaſon why they were ſo ſlow in executing the reſpective Parts of the Works to them aſſigned. That the Pannel obſerved, That, being about the Election-time, and pretty late, it was very probable the Tradeſmen might have got a Cup too much for Buſineſs that Night; and it would be better to defer that Inquiry till next Morning: And, at the ſame time, obſerved, That the Care of theſe Works had been appointed to a particular Committee named by the Council for that Effect. At the ſame time ſome of the ſaid Officers who were preſent complained, that what they called the Baſtions of the Town-wall were too weak; that is,

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the Scaffolding upon which the Cannon was placed, was not ſtrong enough; the Parapet round the Wall, in ſome Places, was too narrow; ſo that one Man could not paſs another; nor were the Parapets ſufficiently cleared. That the Deponent knows there was a Plan made by the deceas'd Mr. *Colin Maclaurin*, of the City-walls, and Baſtions, and other Works neceſſary to be made for the Defence of the City; which was agreed to by the Council, as the Deponent was informed, and a Committee named for bringing it to Execution. That the Deponent obſerved, upon the 9th *September*, as he thinks, that a Ditch near *Wallace*'s Tower, which had been projected by Mr. *Maclaurin* to be made on the North-ſide of a Wall there, was erroneouſly made on the South-ſide of the Wall; whereby it became rather a Security for, than a Defence againſt the Rebels; and which Miſtake, ſo far as the Deponent remembers, was never corrected, but rather carried on, as the Deponent obſerved, upon viſiting the ſame upon *Wedneſday* the 11th of *September*: But, as he did not mention this as any Article of Complaint in the foreſaid Meeting in Mrs. *Clark*'s, he does not know, that any Part of this Miſtake could be charged againſt the Pannel. Depones, That, at the Meeting in Mrs. *Clark*'s above mentioned, the Deponent remembers, that Bailie *Robert Baillie* came into the Room: Upon which the Deponent renewed this Complaint againſt the Workmen for carrying on the Works ſo ſlowly; which he did, becauſe he was informed, that Bailie *Baillie* was the chief of the Committee above mentioned. Upon which the Bailie ſent for one of the Tradeſmen, who made the following

Excuſes:

Excuſes: That they had made the Baſtions as ſufficient as the Timber they could find for that Purpoſe would admit of; and that they had carried on the Work as faſt as they could find Hands to do it. Depones, That ſome time of the ſaid Week, he caſually met with the Pannel in the Parliament-cloſe, and again renewed his Complaint to him about the Slowneſs of carrying on the ſaid Works; which appeared to him ſhould have been carried on without Loſs of Time: And the Pannel mentioned ſomething about the Expence of the Work, and propoſed, that the Voluntiers would advance the Expence thereof according to their Engagement. To which the Deponent replied, That he did not doubt but the Voluntiers would fulfil their Engagements, though he ſuſpected it might be a Difficulty for them at preſent to advance the Money. Depones, That he was preſent at a Meeting in Mr. *Wilſon*'s Houſe, when a Petition, ſigned by a conſiderable Number of the well-affected Inhabitants of the City, was preſented to the Pannel, for aſſociating themſelves as Voluntiers; which the Pannel objected to as High Treaſon; but added, that he ſhould conſult the Crown-lawyers about it: And that he expreſſed his Diſſatisfaction at the Manner of promoting that Petition, and in attaining ſo many Subſcriptions, without previouſly conſulting with him. Depones, That it was obſerved, that thoſe Parts of the Walls near *Potter-row* Port, and *St. Mary* and *Leith* Wynds, were commanded by the adjacent Houſes; and it was thought, that it was proper to build up the Doors and Windows of the ſaid Houſes, to make the Defence of thoſe Parts of the Walls practicable; or to poſſeſs thoſe Houſes

with Parties of the Voluntiers. It was alſo propoſed, to poſſeſs the Houſes at the *Potter-row* Port with a Party, and to make a Communication by a Bridge, by which they could retire to the Walls in caſe of being diſlodged. But nothing of this kind was executed; nor did the Deponent make the Non-execution of this any Part of his Complaint. Depones, That, ſome time in the Week before the Rebels entered *Edinburgh*, the Deponent had Occaſion to meet with the Pannel, and others, in the Exchequer-chamber, and in Mrs. *Clark*'s; when he propoſed to the Pannel to find Security, or, if it was thought neceſſary, even to advance 4 or 500 Guineas, to be diſtributed among the able-bodied Journeymen of the Brewers, Bakers, and other Tradeſmen of the City, to encourage them to join with the Voluntiers in defence of the City that Night in which it ſhould happen to be attacked by the Rebels; which Propoſal the Pannel ſeemed to approve of; and ſaid, That the Deponent needed no Security for his Advance, for he the Pannel would become Caution for the Deponent's paying it. That the Deponent then propoſed, that the Maſters of thoſe Journeymen, and others, ſhould be ſent for, to concert a Plan for the Execution of that Propoſal: But the Pannel alledged, that it was too late for that then; and that ſome of them would readily be about their Bottle; but next Day he would do it. That, on *Sunday* the 15th, the Deponent aſked the Pannel, If he had met with the Maſters of the ſaid Journeymen? &c. he anſwered, That, in the Multiplicity of Affairs, it had eſcaped his Memory, but that he would do it; but does not know if it was done or not. Depones, That, in

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the Afternoon of the 16th of *September*, he heard, that there was to be a Meeting of the Inhabitants in the New Church Iſle, or that ſuch a Meeting was then met; and juſt about this Time the Alarm-bell rung, which was the Signal for the Voluntiers to repair to their reſpective Poſts. That the Deponent, being one of them, went to the Poſt aſſigned to the Company in which he ſerved; ſo that he can give little Account of what paſt at that Meeting. But having ſtepped in to ſee what was going on, he thought it a very tumultuous Aſſembly. That the Deponent obſerved very few of the well-affected Inhabitants that he knew were in it: That there were ſeverals of the Meeting, who, in his Opinion, were not well affected to the Government; and that the Generality conſiſted of People, who, to the beſt of his Remembrance, he had never before ſeen. That the few who ſpoke for defending the City, were treated with very ſcurrilous and opprobrious Language; particularly the Reverend Mr. *George Logan*, who was ſpeaking to that Purpoſe, ſeemed to him to have been pulled down from the Form on which he was ſtanding by Force. Upon which the Deponent left the Meeting, and repaired to his Poſt. Depones, That, on *Monday* the 16th, he went round the Walls of the City upon which the Cannon was planted; and obſerved there were two of them, one at the *Briſto* Port, and another at the South-Eaſt Corner of the Wall near *Bedlam*, upon which no Centinels were then attending; and it was obſerved, theſe Cannon could not be fired, without drawing the Shot; becauſe they might be unloaded, or the Shot altered, during the Time the Centinels were abſent: But that, after the Depo-

nent ſtaid a conſiderable Time at the Cannon on the South-Eaſt Corner, as above, a Centinel at laſt appeared, who ſaid, He had been planted as Centinel upon the ſaid Cannon. Depones, That, upon the Evening of the ſaid 16th *September*, he went along with the other Voluntiers, to deliver up his Arms to the Caſtle; and, in his Return, met with Enſign *Roberton* on the Head of a Party of Men, ſent by Gen. *Gueſt* or Gen. *Preſton*, with Orders, as the Enſign told him, to ſpike up the Cannon on the Walls of the City; but that he was ordered, before entering the City, to apply to the Pannel for his Authority to do ſo. That he had diſpatched *Robert Griffith*, a Gunner, to acquaint the Pannel thereof, and to aſk his Authority. That the Deponent ſaw the ſaid *Robert Griffith* return, who reported, that he had waited upon the Pannel, and that his Anſwer was, That he would give him no Authority; adding ſome Words which he at preſent cannot recollect; but the Impreſſion they made upon him at the Time, and which he ſtill retains, was, that they imported a Diſcouragement of the Execution of the Order; for that the Enſign immediately ſaid, being in Converſation with the Deponent, Should I force? or, I will force my Way into the Town; or Words to that Purpoſe. But the Deponent ſuggeſted to him, It would be more proper for him to make a Report of what had happened, to one of the Generals; which having been done by ſome one of the Party ſent for that Purpoſe, they were recalled, and marched into the Caſtle. And, being interrogate for the Pannel, depones, That he gave it as his Opinion, at Eleven o'Clock at Night of *Monday* the 16th, in the Laigh Council-houſe, that

that the Town could not then be defended, without the Aſſiſtance of the Dragoons, in regard that the Voluntiers had lodged their Arms in the Caſtle; and that a great many of them were either gone in to the Caſtle, or had left the City, upon the Reſolution of delivering up the Town; and that he thought it extremely odd, to propoſe now a Defence of the City in their preſent Circumſtances, when, it ſeemed, it had been judged not tenible, even when the whole Voluntiers were in Arms, and an Offer made for the Dragoons to come in to its Defence: And therefore, upon the whole, was of Opinion, that a Meſſage ſhould be ſent to the Dragoons to return, and ſome proper Methods taken, in the mean time, to gather together as many Voluntiers as poſſible. Depones, That the Deponent either heard Mr. *Drummond* himſelf, or ſome other Perſon, ſay, That he Mr. *Drummond* was going out to bring back the Dragoons; and he did not return while the Deponent was there. And depones, That he did not think the Alarm-bell a proper Signal for collecting the Voluntiers, while the Dragoons were at ſo great a Diſtance, and the Rebels ſo nigh. That this, he conſidered as an Intimation to the Rebels to make the Attack on the City ere it was poſſible for the Dragoons to come to its Defence; and any Intimation to the Rebels, of a Deſign of defending the City, would probably prove a Hardſhip on the Deputies that had been commiſſioned by the Town-council to capitulate with them about the Surrender of it, and who were at that Time at the Rebel-camp.

XX. *Alexander*

they might receive Orders, for the Company was anxious or uneaſy for Orders. That there were other Companies of Voluntiers in the College-yards, who marched to the *Lawn-market* at the ſame Time, and the Deponent thinks for the ſame Reaſon. That, after coming to the *Lawn-market*, they waited there for a conſiderable Time without receiving Orders; till at laſt the Deponent, at the Deſire of ſome other Officers of the Voluntiers, went to the Goldſmiths Hall, to deſire the Pannel's Orders for thoſe Companies of Voluntiers. That the Deponent found a Crowd in the Goldſmiths Hall, with ſome Difficulty got to the upper End of it, and told the Pannel, That he was ſent by the Officers of the Voluntiers, who were ſtanding in the *Lawn-market*, to aſk his Lordſhip what Orders he would pleaſe to give them: That the Pannel anſwered, That he was at a Loſs to know what Orders to give them; and thinks he further added, That they were then deliberating about that Matter. That the Deponent waited ſome little Time, to ſee whether he would get Orders; but getting none, he left the Hall, and returned to his Company in the *Lawn-market*, and acquainted the other Officers of the Voluntiers what had paſſed. That, not long after the Deponent's Return, he ſaw the Officers of the Voluntiers that were in the upper End of the *Lawn-market* in a Knot together, and, as he ſuppoſed, conſulting what Meaſure they ſhould take; and the Deponent was ſoon thereafter told, That they had reſolved to deliver up their Arms to the Caſtle: And, upon the Deponent's going up the *Lawn-market*, the Officers informed him of their ſaid Reſolution; and, agreeable thereto, the Deponent went

went up to his Company, which was the Weſtmoſt in the *Lawn-market*; and the whole of them marched up to the Caſtle. And the Reaſon given the Deponent for taking that Reſolution, was, Becauſe no Orders were given them, and they were apprehenſive that their Arms might fall into the Rebels Hands.

XXI. *Archibald Stevenſon*, Writer in *Edinburgh*, depones, That he was an Officer of the Voluntiers, for Defence of the City, in *September* 1745. That he was preſent at a Meeting that the Pannel had with ſome of the Voluntiers in Mrs. *Clark's*; where Mr. *Webſter* the Miniſter was alſo preſent; and which, he thinks, was upon *Saturday* the 14th *September*. And depones, That he there heard Mr. *Webſter* propoſe to the Pannel, That a Number of the Servants and Journeymen of the Brewers and Bakers in the Town ſhould be hired to aſſiſt in the Defence of the City any Night it ſhould be attacked, at the Premium of a Guinea each in hand; and a further Reward to be given them, according to their Behaviour, when the Matter was over. That Mr. *Webſter* undertook to raiſe, by Subſcription, a Sum of *L.* 500, to defray the Expence; and offered to give Security for Payment of the Money. That the Deponent did not hear what Anſwer the Pannel gave; but ſuppoſed that the Propoſal had not been gone into, becauſe he heard no Reſolution taken upon it in that Meeting, nor did he afterwards hear any more of that Matter. Depones, That, in the Afternoon of *Monday* the 16th of *September*, and, as he thinks, about Four o' Clock, while the Voluntiers were drawn up in the

Lawn-market, he was ſent by them with a Meſſage to the Pannel, to aſk what Orders he had to give them? and likewiſe to aſk, in caſe the Town was not to be defended, where they were to depoſite the King's Arms? or Words to that Purpoſe. That he found the Lord Provoſt in Goldſmiths Hall. That to the firſt Part of his Meſſage he received no Anſwer, and got no Orders for the Voluntiers, what they were to do: But to the ſecond Part of the Meſſage, the Pannel anſwered, That he would give Orders to receive the Arms at the Court of Guard. Depones, That the Deponent waited till the Pannel left Goldſmiths Hall, and went to the New Church Iſle; and, on the Way thither, in the Parliament-cloſe, the Deponent ſaw *Alexander Cuninghame* Surgeon come up to the Pannel, and deliver the following Meſſage: 'That the 'Dragoons found that the Number of the Rebels 'were ſo far ſuperior to them, that they were ob'liged to retire;' but the Deponent does not remember the Place he named where the Dragoons had gone to; and ſaid, That the Number of the Rebels, ſo far as they could judge by Appearance, could not be under *eight thouſand* ſtrong. Depones, That thereupon he heard the Pannel ſay, If the Troops were retired, then all was over. That he believes the Occaſion of Mr *Cuninghame*'s being with the Dragoons was, that he expected there was to be an Action, and he attended them in the way of his Buſineſs. And being further interrogate, depones, That he left the Provoſt as he was going into the New Church Iſle, and returned to the *Lawn-market*, and reported to the Officers of the Voluntiers the Anſwer he had got to the Meſſage they had ſent

by

by him. That thereupon they conſulted together; and ſome were for immediately delivering up their Arms into the Caſtle; but Provoſt *Drummond*, who was one of their Officers, inſiſted, that, before taking that Step, they ſhould ſend a ſecond Meſſage. That a ſecond Meſſage was accordingly ſent; but by whom, the Deponent does not remember; and the Meſſenger returned without any Anſwer: Whereupon the Voluntiers marched up to the Caſtle, and delivered up their Arms, ...

XXII. Enſign *William Roberton*, of *Edinburgh* Caſtle, depones, That, in the Evening of the 16th *September* 1745, he being then an Officer in the Caſtle of *Edinburgh*, was ſent by Gen. *Preſton* about Six o' Clock at Night, after that the Voluntiers delivered up their Arms in the Caſtle, with a Party, to bring up to the Caſtle the Cannon that were on the Walls of the City, or otherwiſe to render them uſeleſs, by ſpiking them up, and knocking off the Trunnions; and, for this Purpoſe, he had Carts and Horſes along with him, and proper Inſtruments for ſpiking the Cannon, and beating off the Trunnions: But then, his Orders were reſtricted, not to do this without Licence and Order from the then Lord Provoſt of *Edinburgh*. Depones, That, with his Party, he marched down to the Reſervoir; and then he firſt ſent the Serjeant of his Party, and after that one *Griffith*, a Gunner in the Caſtle, with a Meſſage to the Provoſt, to know whether he might enter the Town for the above Purpoſe; and the Anſwer which was returned to him from the Pannel, by both the Meſſengers, was, That he would give no Orders concerning the

Cannon; but the Deponent might do as he thought proper. Upon this he ſent to Gen. *Gueſt*, to know how he ſhould behave; and Orders were brought him to return to the Caſtle. Depones, That Mr. *Webſter* was with him, procured him a Flambeau, ſome Smiths, Carts and Horſes; and that, without going further, the Deponent returned to the Caſtle.

29th *October*, betwixt One and Two o' Clock in the Morning.

It was now moved by ſome of the Jury, That they might have leave to make a Motion in Court before any further Procedure in the Trial: Which being allowed of by the Lords, Sir *Alexander Niſbet* of *Dean*, *Patrick Crichton* of *Woodhouſlie*, *John Niſbet* Portioner of *Water of Leith*, and *Edward Lothian* Jeweller in *Edinburgh*, four of the Gentlemen upon the Aſſize of the ſaid *Archibald Stewart* Pannel, humbly repreſented and moved in Court, in their own, and in name of the whole other Aſſizers, That the Court had now continued upon this Trial, without any Reſpite, ſince *Tueſday* Morning at Eight o' Clock, being upwards of forty Hours: That, by this Sederunt, ſeveral of the Aſſizers were already greatly fatigued, and one or two of them altogether unable to hold it out any longer, without ſome Relief: That the Aſſize could not imagine it to be the Intention, either of Proſecutor or Pannel, to kill or deſtroy them; which behoved to be the Conſequence, ſhould they inſiſt upon finiſhing the Trial at one Sederunt: That their Lordſhips, as well as the Pannel, and other Members of Court who had attended this Trial, muſt be ſenſible, from what they had ſuffered themſelves, of the Hardſhips undergone by the Aſſize, and

conſequently

conſequently of the Reaſonableneſs of their Demand: That, although other People's Situation and Strength might enable them to go on without Relaxation, the ſaid four Gentlemen did, with great Candour and Ingenuity, aſſure the Judges, That they were no longer able to go on in their Duty upon this Trial: And therefore begged leave to acquaint their Lordſhips thereof; at the ſame time flattering themſelves, that both the Pannel, and his Majeſty's Advocate, would concur and agree, that the Trial might be put off, and continued for ſuch a ſhort Space of Time as the Lords ſhould pleaſe to appoint, that in the mean time the Aſſize, and all concerned, might have a little Reſt. And, with the greateſt Submiſſion, moved the Court, That they would pleaſe take this their Requeſt into Conſideration, and grant the Deſire thereof accordingly.

'Upon hearing of which Motion, Mr. *Archi-*
'*bald Stewart* Pannel, and his Council, in reſpect
'of the Diſtreſs which the Length of this Trial has
'already brought upon ſeveral of the Aſſize, and
'that it ſeems impracticable to finiſh the Trial at
'one Sederunt, conſent to the granting the Deſire
'of the Motion made as above by the Aſſizers, in
'caſe the Lords ſhall think proper ſo to do.

Signed ARCH. STEWART.
JAMES FERGUSON.'

'Mr. *William Grant*, his Majeſty's Advocate,
'does not oppoſe the granting the Deſire of the
'foreſaid Motion, agreed to by the Pannel and his
'Council; and hereby conſents that the Lords
'grant the ſame, in caſe they ſo think fit; and that

'in

'in regard the Jury have already attended forty 'Hours; and that ſeveral of them are ſo valetudi-'nary, that they are unable to ſtand out the Trial, 'without ſome Reſpite; and alſo that ſeveral of 'the Proſecutor's Witneſſes have given him Notice, 'that they are not able to attend longer, without 'endangering their Health. *Signed*

WILL. GRANT.'

'The Lords Commiſſioners of Juſticiary, having 'heard the Motion of the Aſſize, and the Conſent 'to granting the Deſire thereof, both of the Pan-'nel and his Majeſty's Advocate, as above, and ful-'ly deliberated and argued thereon, they, in reſpect 'thereof, and of the Neceſſity of the Caſe, conti-'nue the Diet till Eleven o' Clock of the Forenoon 'of this Day; and ordain the Pannel and Witneſ-'ſes to attend then, each under the Pain of Law; 'as alſo the haill fifteen Aſſizers then alſo to attend, 'each of them under the Penalty of Five hundred 'Pounds *Sterling*: And the ſaid Aſſizers, in token 'of their Acquieſcence, hereby become bound and 'enacted, each for themſelves, their Heirs and Suc-'ceſſors, That they ſhall appear and give Attendance 'at the foreſaid Hour, in this Place, each under the 'foreſaid Penalty of Five hundred Pounds.

Signed ALEX. FRASER, *I. P. D.*'

Alex. Niſbet.	Tho. Wood.	Alex. Campbell.
Jo. Niſbet.	Pat. Crichton.	R. Fleming.
James Dewar.	Tho. Trotter.	James Stirling.
John Sivright.	Hugh Clerk *junior*,	James Hunter.
James Falconer.	Wm Wight.	Edw. Lothian.

Caria

Lord *Strichen* Præſes.

Curia juſticiaria S. D. N. Regis, tenta in nova ſeſſionis domo burgi de Edinburgh, vigeſimo nono die menſis Octobris 1747, *per Honorabiles viros Magiſtros Alexandrum Fraſer de Strichen, Patricium Grant de Elchies, Carolum Areſkine de Tinwald, & Hugonem Dalrymple de Drummore, Commiſſionarios Juſticiarii dict. S. D. N. Regis.*

Curia legitimè affirmata.

Intran.

Archibald Stewart of the City of *Edinburgh*, Merchant, and late Lord Provoſt of the ſaid City, Pannel, indicted and accuſed as in the former Sederunt.

The haill fifteen Aſſizers being called over, and anſwering to their Names, his Majeſty's Advocate proceeded to the remaining Part of his Proof, by adducing the following Witneſſes, *viz.*

XXIII. *Robert Griffith*, one of the Gunners of the Caſtle of *Edinburgh*, depones, That, about Five or Six of the Clock in the Afternoon of *Monday* the 16th of *September* 1745, after that the Volunteers had delivered their Arms in the Caſtle, it was thought proper, by the commanding Officer of the Caſtle, to give Orders for bringing up the Cannon, and other Arms, ſuch as Patteraroes, that were on the City-walls, or otherwiſe to render them uſeleſs, that ſo they might not fall into the Hands of the Rebels. That a Party was ſent from

the

the Caſtle for this Purpoſe, under the Command of Enſign *Roberton*; and the Deponent was ſent by Gen. *Gueſt* to follow that Party, to inquire if the ſaid Mr. *Roberton* had Provoſt *Stewart*'s Liberty to go on with the ſaid Work: That Mr. *Roberton* declared he had no ſuch Concurrence; but had ſent his Serjeant to the Provoſt for that Effect. That the General ordered the Deponent alſo to go forward, and demand the Pannel's Licence or Concurrence to effectuate the ſame. Accordingly the Deponent waited on the Pannel, and demanded from him his Licence or Authority to go on, and bring to the Caſtle, or demoliſh, theſe Cannon, *&c.* which were then mounted on the Town-walls, leſt they ſhould fall into the Hands of the Enemy. That the Pannel's Anſwer was, He had no Authority to give, as the Dragoons were gone Eaſtward, and his Voluntiers had laid down their Arms. That he had lately received a Letter from the Enemy, which he deſired the Deponent to read. That the Deponent told the Pannel, that his, the Deponent's, Duty was not to expoſtulate, or loſe Time with the Pannel, but in a poſitive Manner to have his Concurrence; which the Pannel poſitively refuſed; but added, 'That, we might do as we would, without 'his Liberty.' That, when the Deponent left the Pannel, he found Enſign *Roberton* and his Party ſtanding in the *Lawn-market* Street, with a Couple of Carts, and ſome Blackſmith Boys, with Forehammers in their Hands, whom Mr. *Roberton* had impreſſed to facilitate his Work. That the Deponent went to Gen. *Gueſt*, and acquainted him, that he could not procure the Provoſt's Licence to bring in, or demoliſh the foreſaid Cannon. That the General

neral was then in Converſation with *George Lauder* Surgeon in *Edinburgh*, whom the Pannel informed the Deponent, that he had ſent to the General. That the General ordered the Party to return to the Caſtle; and, at the ſame time, told the Deponent, that the proper Time was over for effectuating the foreſaid Work, it being then dark. Depones, That, when he entered the Door where the General and Mr. *Lauder* were in Company, he heard the General ſay, 'I am ſorry the Provoſt has not granted my Requeſt.' And being interrogate for the Pannel, Whether he reported to Gen. *Gueſt* the laſt Words of the Pannel's Anſwer to him, particularly that they might do as they would, without his the Pannel's Authority? depones he did. And the Deponent further deſired of Gen. *Gueſt* to give the Party his Authority to go on with the foreſaid Work, without the Pannel's Liberty. To which the General anſwered, The Provoſt had loſt the proper Opportunity; and, if the Party remained any longer in Town, they might fall into the Hands of ſome flying Party of the Enemy. And, being further interrogate for the Pannel, depones, That the Garriſon of the Caſtle of *Edinburgh* conſiſted then of the Caſtle-company, which ought to be a hundred Men; and two Companies of Col. *Laſcelles*'s Regiment, which ought to be ſeventy Men each; but none of the above Companies were compleat. That the Party ſent for the Cannon, conſiſted of an Officer, two Gunners, a Serjeant, and twenty Men; and their falling into the Hands of the Rebels, would very much have weakened the Garriſon.

XXIV. *Joſeph Mead*, one of the Serjeants of the Caſtle of *Edinburgh*, depones, That, upon the Evening of the 16th of *September* 1745, he was deſired, by Enſign *Roberton*, to get ready a Party of twenty Men; which, after the Deponent did, Enſign *Roberton* ordered him and the Party to follow him; which accordingly they did; And, after they were come a little Way down the *Caſtlehill*, Enſign *Roberton* ordered the Deponent to go to the Pannel, and acquaint him, that the Enſign was come with a Party, in order to render uſeleſs the Cannon that were on the City-walls, and wanted the Pannel's Commands thereanent. The Deponent accordingly went to the Pannel, and delivered his Meſſage. To which the Pannel made Anſwer, That Enſign *Roberton* might do as he would. That, upon this, one Dr. *Lauder*, who was then in Company with the Pannel, roſe up, and deſired Liberty to go and ſpeak to the General; and that the Pannel ſaid, He might go. And accordingly Mr. *Lauder* and the Deponent left the Provoſt, who was then in the Council-houſe; and, when they came to the Caſtle, they met Major *Roberton*, who deſired them to go to Gen. *Gueſt*; which accordingly they did. And Mr. *Lauder*, addreſſing the General, told him, That there was a Party come down to deſtroy and render uſeleſs the Cannon that were upon the Walls. To which the General made Anſwer, Why not? the Provoſt has not done what he ought. To which Mr. *Lauder* replied, What could he do? or, What could we do, ſince the Forces have left us? And the Deponent telling the General the Meſſage he had been ſent with by Enſign *Roberton* to the Pannel, with the Pannel's Anſwer, the

the General ordered Enſign *Roberton*, with his Party, to return to the Caſtle; and which Meſſage to the Enſign was ſent by Mr. *Lauder*; and the Deponent believes Mr. *Lauder* delivered that Meſſage to the Enſign, becauſe the Deponent remained with the General till Mr. *Lauder* was gone, and then aſked the General, What Commands he had for his Officer, Enſign *Roberton?* to which the General made Anſwer, You may go and tell him to withdraw his Party to the Caſtle: And the Deponent having gone, found that the Enſign and his Party were already returned.

XXV. *Patrick Lindeſay*, Depute-Secretary to the Forces in *North-Britain*, depones, That, about Two o' Clock of *Monday* the 16th of *September* 1745, he being in Company with Gen. *Gueſt*, the then Lord Advocate and Solicitor came into the Room, and told the General, That it was thought proper that a hundred Dragoons ſhould be brought into the City of *Edinburgh*, to aſſiſt in the Defence of it; and deſired that he might give a Warrant for bringing them into it. The General agreed to the Propoſal; but thought it was proper that a Petition ſhould be ſigned by the Pannel, the Lord Advocate, and Solicitor, requeſting the Thing from him; which Petition the Deponent wrote: And the Lord Advocate carried it down, as the Deponent thinks, to have it ſigned by the Pannel; and deſired that the Deponent might come in a Quarter of an Hour to his Houſe to get the Petition when ſigned. That, after this, the Lord Advocate and Solicitor left the Genetal, and Col. *Clayton* came into his Room, who was going that Day to Briga-

deer *Fowkes*. That the General told him what the Lord Advocate and Solicitor had been with him about; and, at the ſame time, gave him Orders, upon his ſeeing the foreſaid Petition ſigned and delivered to the Deponent, to acquaint Brigadeer *Fowkes*, that it was his Orders that a hundred Dragoons ſhould be forthwith ſent into the Town of *Edinburgh*. The Deponent and Col. *Clayton* went from the Caſtle to Lord Advocate's Houſe in a very ſhort Time after this; and calling for the above Petition, he received it, ſigned by the Pannel, Lord Advocate, and Solicitor, and ſhowed it to Col. *Clayton*; who immediately left the Deponent, in order to go to Brigadeer *Fowkes*. Depones, That, about an Hour after this, the Deponent, being with Gen. *Gueſt*; and the General, hearing that there was ſome Deſign among the Inhabitants for delivering up the Town, ſent the Deponent to the Pannel, to know, whether he ſtill deſired that the hundred Dragoons ſhould come to Town in terms of the above Petition or Requeſt; becauſe, if he did not, he would ſend contrary Orders to Brigadeer *Fowkes*. The Deponent accordingly went, and delivered his Meſſage to the Provoſt, whom he then found in a very numerous Meeting of the Inhabitants in the New Church Iſle; but does not remember that he told the Pannel the General's Reaſon for ſending this Meſſage. That the Pannel demanded the Opinion of the Meeting, Whether the Dragoons ſhould be brought in, or not? Whereupon a great Number cried out, *No Dragoons*. And the Pannel upon this told the Deponent, that he would neither bid nor forbid them, but that the General might do what he thought proper. The Deponent upon this,

this, having the Petition or Requeſt in his Cuſtody, took it out of his Pocket, and wrote upon the Back of it, *The Generality of this Meeting are not for receiving the Dragoons.* This ſhort Note he preſented to the Pannel for him to ſign; but this he refuſed, and ſaid, Why will ye diſtreſs me about theſe Dragoons? or Words to that Purpoſe. And depones, That at that Time, or ſome Time after, ſpeaking to the Pannel upon the Subject of admitting the Dragoons, the Deponent aſked him, ſince he had once ſigned a Requeſt for bringing in the Dragoons, why he would not either continue the ſame Requeſt, or counter-order it? and the Pannel's Anſwer was, That he ſigned the Requeſt at the Deſire of the Advocate or Solicitor. Depones, That, when he wrote the above Note, he did not tell the Pannel that the Paper upon which the Note was wrote, was the Requeſt, which he, the Advocate, and Solicitor, had formerly ſigned; nor did he ſhow him any more than the Back-ſide of the Paper. And being interrogate by the Pannel, What it is the Deponent means, by his ſaying, That he had a Converſation with the Pannel, at that Meeting, or ſome Time after, about admitting the Dragoons; whether he means that Day or ſome Day thereafter? depones, He cannot be poſitive as to the Day. And depones, That, upon delivering Gen. *Gaeſt*'s Meſſage to the Pannel, he did it aloud; and is poſitive, that the Meeting delivered ſuch an Opinion as he has already deponed upon; and thinks the Provoſt put the Queſtion as he has already deponed; but as to this laſt Particular he is not poſitive.

XXVI. *Donald*

XXVI. *Donald Mackay*, Cadie in *Edinburgh*, depones, That, on *Monday* Afternoon the 16th of *September* 1745, *William Henderſon* gave the Deponent a Letter to be carried to *Leith*, to one *William Roſs* a Gunner; which the Deponent was told was to bring him up from *Leith* to the Pannel, then Lord Provoſt of *Edinburgh*. That, after the Deponent had delivered his Meſſage, and returned, as he was walking about the *Luckenbooths*, a Man dreſſed in black Cloaths came to the Deponent, and aſked him, If he knew him? The Deponent anſwered, 'I do not know you, Sir.' The Man replied, 'What, do you not know me?' And the Deponent ſaid, 'I believe I may have ſeen you 'once or twice; but I do not know your Name.' Then the Man ſaid, 'Here is a Letter to the 'Provoſt; you muſt find him out, and give it him; 'and here is Three pence for your Pains, and next 'time I ſee you I'll give you a Shilling.' That the Deponent went in queſt of the Provoſt, and ſaw Mr. *Charles Erſkine* Advocate, *Charles Fraſer* Merchant, and the deceas'd Mr. *Robertſon* Miniſter, ſtanding together. That the Deponent came up to them, and aſked them, If they knew where the Provoſt was? for here was a Letter he had to give him. Mr. *Charles Erſkine* ſaid, 'Give me the Let-'ter, and I'll deliver it to him:' And the Deponent gave the Letter to Mr. *Erſkine*. Then *Charles Fraſer* ſaid, 'I am lighter-footed than you; give 'me the Letter, and I'll carry it to him:' And Mr. *Erſkine* gave him the Letter, and *Charles Fraſer* went off with it. And depones, That the Deponent did not then know, nor does he yet know the Contents of the Letter, nor from what Perſon

it

it was. And depones, That, after the Rebels had got Poſſeſſion of the City of *Edinburgh*, he ſaw the ſame Perſon who had given him the Letter as above, who was then an Officer in the Service of the Rebels, and craved him for his Shilling that he had promiſed him; but did not get it.

XXVII. Mr. *Charles Erſkine* of *Edinſhead*, Advocate, depones, That, upon the Evening of *Monday* the 16th of *September* 1745, as he believes, though he cannot be poſitive of the Day, the Deponent, *Charles Fraſer* Merchant, and the now deceas'd Mr. *Robertſon* Miniſter, were ſtanding together oppoſite to the Tolbooth; when a Street-cadie came running up in ſome Haſte, and ſaid, 'Who 'is there? Where is the Provoſt?' And the Deponent turning about his Face to the Cadie, ſaid, 'Why, what do you want the Provoſt for?' The Cadie anſwered, 'Here is a Letter I have to give 'him.' The Deponent ſaid, 'From whom is the 'Letter?' The Cadie anſwered, 'I do not know; 'a Man in black Cloaths gave it me to give him.' The Deponent replied, 'I believe the Provoſt is juſt 'now in the New Church Iſle:' And then *Charles Fraſer* ſaid, 'I believe the Provoſt is in the New 'Church Iſle; if you'll give me the Letter, I'll 'carry it to him.' And the Deponent having before taken the Letter out of the Cadie's Hand, he, at the Cadie's Deſire, then gave it to *Charles Fraſer*. That the Deponent looked at the back of the Letter, and ſaw that it was addreſſed to the Lord Provoſt; but cannot ſay, that, in the Hurry they were then in, he obſerved what more was in the Addreſs, nor did he look at the Seal. And being ſhown the

Letter

Letter in the Clerk's Hands, which is the firſt in the Liſt of Writings ſubjoined to the criminal Libel, depones, That he cannot ſay, whether it is the ſame with the Letter above deponed upon, or not.

XXVIII. *Charles Fraſer*, Merchant in *Edinburgh*, depones, That, between Five and Six o' Clock of the Evening of the Day before the Rebels came into the City of *Edinburgh*, the Deponent being ſtanding on the Street, with Mr. *Erſkine* the preceeding Witneſs, a Cadie came up to them, aſking, where was the Lord Provoſt? Mr. *Erſkine* anſwered, 'What do you want with him?' The Cadie ſaid, 'I have a Letter to give him.' Mr. *Erſkine* ſaid, 'Let me ſee it.' The Cadie gave him the Letter; and Mr. *Erſkine* ſaid, 'The Pro-'voſt is in the New Church Iſle; I'll go in with it 'to him.' Then the Deponent ſaid to Mr. *Erſkine*, 'Sir, Don't trouble yourſelf; give it me, and I'll 'carry it to him.' And the Deponent got the Letter, and went with it to the New Church Iſle; when the Deponent found a great Crowd of People there, and ſome Difficulty to get at the Pannel; and therefore gave the Letter to Mr. *Palſon*, a Vintner in Town, to hand it to the Pannel: And the Deponent ſaw it handed accordingly; and ſtaid till it was broke open. That the Deponent cannot ſay, he ſaw it in the Pannel's Hands, nor knows he by whom it was opened. And the firſt Thing the Deponent noticed in the Reading, after they had read a Line or two of the Letter, was, that they ſaid it was from *Charles P. R.*' Upon which there aroſe in the Meeting a great Noiſe and Murmuring, ſome

ſome calling out, not to read it: And then the Pannel, and the reſt of the Meeting, diſmiſſed; and the Magiſtrates, as the Deponent thinks, went to the Goldſmiths Hall. And being ſhown the Letter, which is the firſt in the Liſt of Writings ſubjoined to the criminal Libel, depones, He believes it may be the very ſame that he has deponed upon, though he did not then either obſerve the Seal, or that it was addreſſed to the Magiſtrates and Town-council, as well as to the Lord Provoſt of *Edinburgh*.

XXIX. *William Henderſon*, Writer in *Edinburgh*, depones, That, upon *Monday* the 16th of *September* 1745, the Deponent was in the New Church Iſle; where he ſaw the Pannel, and a Number of other Perſons, met together; but remaining there for a very little Space, he did not know what was tranſacted amongſt them. That he went from that Place towards the Caſtle-hill, and returned from thence to the Goldſmiths Hall about Six o' Clock at Night; where he found the Pannel, the other Magiſtrates, and moſt of the Council met. That he ſaw a Letter lying upon the Table; which, from Curioſity, he took up, and looked at: And the Letter, marked N° 1. which is now ſhown to him, he ſays is the Letter he ſo looked at; and which Letter, he was told by ſome Perſon in the Hall (the Deponent does not call to mind who that Perſon was) had been brought in to the Meeting in the New Church Iſle. That, very ſoon after the Deponent came to this Place, the Pannel propoſed, the Town's Aſſeſſors ſhould be ſent for, for their Advice; which,

was agreed to: And the Deponent went for the deceas'd Mr. *James Graham*, and Mr. *Robert Pringle*; but found none of them. That, after he returned, he reported, that Mr. *Graham* was not to be found, and that Mr. *Pringle* was out of Town; and thereafter Mr. Solicitor *Haldane*, one of the Town's Aſſeſſors, who had been called upon by the Provoſt and Magiſtrates, came in to the Meeting; and the Pannel then took the Chair; and the Deponent was ordered, he believes by the Provoſt, to read the Letter; and having read the Addreſs, and the Subſcription, which is *Charles P. R.* and begun to read a Line, Mr. *Haldane* withdrew, and ſaid, That theſe were Matters too high for him. Upon this the Provoſt ſaid, *Good God! I am deſerted by my Arms, and by my Aſſeſſors.* That then there was a Pauſe; and the Pannel having demurred about reading the Letter, one of the Meeting ſaid, He thought there could be no Harm in having it read. Whereupon the Deponent proceeded, and read the Letter. That then a Motion was made, to ſend a Deputation to the Rebels Camp, as the only means to ſave the Town from the Menaces contained in the Letter. And being interrogate, Who it was that made the Motion? ſays, That ſeveral of the Members of the Meeting ſeemed to be of that Opinion; but who it was that made the Motion, the Deponent cannot tell; but, as he remembers, there was a good deal of Confuſion among them. However, this Motion was agreed to by the Meeting. And at this Time the Deponent was called upon by Dean of Gild *Allan*, and by him deſired to go to the Parliament-cloſe, where the *Edinburgh* Regiment was, and tell the Officer, without Loſs of

Time,

Time, to march his Men up to the Caſtle, and to deliver in their Arms. That the Deponent accordingly went, and found one Mr. *Burns*, who was Adjutant to the Regiment, and acquainted him with the Meſſage ſent by Dean of Gild *Allan*. But he having aſked at the Deponent, Whether the Pannel had given Orders for that Purpoſe? and the Deponent having received no Commiſſion, but from Dean of Gild *Allan*, Mr. *Burns* demurred to follow the Advice given. That the Deponent immediately returned, to acquaint the Dean of Gild of what Mr. *Burns* had ſaid. Whereupon he immediately went down Stairs to ſpeak to Mr *Burns*; who they met coming up to the Goldſmiths Hall. What paſſed between them, the Deponent knows not; but, in a very little after, he ſaw the Regiment march to the Caſtle. Depones, That, after he returned with his Anſwer to Dean of Gild *Allan*, he was informed in the Meeting, that four Perſons had been named as Deputies to go to the Rebels Camp, namely, Bailie *Gavin Hamilton*, Bailie *Yetts*, Convener *Norrie*, and Deacon *Orrock*. Whether there were more named or not, the Deponent knows not; nor does he know further as to any Inſtructions given them, but that they were to find out upon what Terms or Conditions the Rebels were to enter the Town. That, in purſuance of this, the Deputies went out, and returned again betwixt Nine and Ten o' Clock at Night, with a written Anſwer, N° 2. in the Liſt of Writings ſubjoined to the Libel: Which having been ſhown to the Deponent, he ſays, it is the Anſwer the Deputies brought in. After this Anſwer was delivered by them to the Meeting, which, by the Time the

Deputies had returned, had gone from the Goldſmiths Hall to the Laigh Council-houſe, it was obſerved, that it contained a Limitation of Time, namely, Two o' Clock in the next Morning, within which a preciſe Anſwer was to be given by the Magiſtrates and Council. And as, by this Time, the Magiſtrates had ſome Information, that Sir *John Cope*, and his Majeſty's Forces, were off *Dunbar*, and that it was believed by that Time they would be landed, the Meeting came to a Reſolution to ſend a ſecond Deputation, in order to try if they could prevail to have the Time lengthened out till Nine or Ten o' Clock next Day. That the Deponent does not know preciſely who theſe ſecond Deputies were, nor did he ſee them ſet out or return; but that, a Day or two after, a Paper was put into his Hands by Provoſt *Coutts*, who was the only one of the ſecond Deputation whom the Deponent knows of, or remembers, which, he ſaid, was the Anſwer returned upon the ſecond Deputation to the Magiſtrates and Town-council: And the Writing, marked N° 3. in the Liſt ſubjoined to the Libel, now ſhown to the Deponent, he ſays, is the Paper he received from Provoſt *Coutts*, as above. And being interrogate, Whether the Pannel made the Motion, or acquieſced or concurred in the Deputations? ſays, He does not remember that he made the Motion; but that he took it for granted that he concurred or acquieſced in it, either explicitly or tacitly; not being able to call to mind any thing he uttered or ſaid concerning them, excepting that, when the Inſtructions were given to the ſecond Deputies, he urged them to inſiſt, That it was then late, and he could not have the Senſe of

the

the Inhabitants; and therefore it was reaſonable they ſhould be indulged till Ten o' Clock, that they might have an Opportunity to ſee what the Sentiments of the Inhabitants were concerning that Matter. And depones, That he, as under the Town-Clerks, always attends the Magiſtrates when they meet together in the Council as Magiſtrates; but the Deponent knows of no Minute of Record that was made of the Tranſactions of that Day. And depones, That, about Four o'Clock, or a little after, he had Directions from the Pannel to go to the Croſs, and to deſire, that ſuch Inhabitants or Burgeſſes as he there met with, ſhould repair to the New Church Iſle; which the Deponent accordingly did. And ſays, That the aforeſaid Directions were given him by the Pannel as he was proceeding from the Goldſmiths Hall to the New Church Iſle. And further ſays, That the Paper, marked N° 8. in the Liſt of Writings ſubjoined to the Libel, he verily believes, is the Paper which he ſaw in the Pannel's Hand about Three or Four o'Clock, which of the two the Deponent cannot be poſitive; but that it was that ſame Afternoon before the Meeting in the New Church Iſle above mentioned.

XXX. Sir *George Preſton*, of *Valleyfield*, depones, That, in *September* 1745, the Deponent was Captain of a Company of Voluntiers for Defence of the City of *Edinburgh*; and, on *Monday* the 16th of that Month, his Station was to keep Guard with his Company at the *Netherbow* Port, along with another Company commanded by Mr. *James Nimmo*: And, when it was pretty far in the Afternoon, the Companies being drawn out upon

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the Streets, the Deponent went to the Pannel to receive his Orders what they were to do, and he found the Pannel in the New Church Iſle; who ordered the Deponent to march the Companies to their Alarm-poſt in the *Lawn-market*, and to remain there till further Orders. That the Deponent immediately marched up the Companies to the *Lawn-market*; and there he met with ſeveral Voluntiers in their Return from the Caſtle of *Edinburgh*, who told the Deponent, That they had marched up their Companies to the Caſtle, and delivered up their Arms there; and it was high Time for him to do ſo likewiſe. And the Reaſon they gave the Deponent for having taken that Step, was, That they ſaid, that now the Town was not to be defended; and that a Reſolution had been taken in the New Church Iſle, not to defend the Town. That the Deponent followed their Advice, marched up with the two Companies above mentioned to the Caſtle, and there delivered up their Arms. Deponies, That, between Three and Four o'Clock of the ſame Afternoon, there came in at the *Netherbow* Port ſixteen or eighteen Carts loaded with Spades and Shovels, which, it was ſaid to the Deponent, were carrying to the Caſtle; and a Town-officer came to the Deponent, with Orders, as from the Pannel, then Provoſt, to let them paſs; which he did accordingly. That thereafter, when the Deponent went to the Caſtle, he aſked Mr. *Lyon*, the Store-keeper of the Caſtle, Whether theſe Spades and Shovels had been brought thither? who anſwered, That there came none there; for they had no Uſe for them; and they had great Abundance of their own.

XXXI. *James*

XXXI. *James Millar*, late Servant to the deceas'd *Alexander Bruce* of *Kennet*, depones, That, upon the 16th of *September* 1745, the Deponent was ſtanding at the Entry of the Tolbooth Church, in the Afternoon, and ſaw ſeveral Carts, how many he cannot now ſay, loaded with Shovels, Spades, and Mattocks, brought towards the Entry to the Laigh Council-houſe, and taken into the Door which enters in to the North-gavel of the Parliament-houſe; but where they were carried afterwards, the Deponent knows not. And further ſays, That ſome Town-officers told him, that theſe Carts were brought thither by the Order of the Lord Provoſt; at leaſt one of the Town-officers, whoſe Name he knows not, but he is an old Man, and he would know him if he ſaw him again, told him ſo. And, upon an Interrogatory put to him, further ſays, That whether that Officer was waiting upon the Carts, or attending the Provoſt, who, he believes, was in the Goldſmiths Hall, he does not know.

XXXII. *Baillie Bryden*, Lieutenant of the Royal Regiment of Artillery, depones, That he was in a Tavern with the Pannel ſome little Time before the Rebels entered the Town, in the Year 1745, when a Gentleman was brought in to them, who ſaid, He had carried along with him from *Dalkeith* about fifty Men to aſſiſt in defending the City againſt the Rebels. That the Deponent did not obſerve the Pannel ſay much to him; but he roſe up from his Seat, and thanked him. That the Provoſt ſeemed to be at a Loſs where to quarter them; but, at laſt, the Provoſt gave Directions to carry them

them to the High School, as the propereſt Place to quarter them. And further depones, That he was employed in placing the Cannon on the Walls of the City; and did not find any Occaſion of Complaint to the Provoſt concerning any other Matter, than what related to his own Buſineſs; and it was chiefly concerning the making of the White-iron Caſes for the Grape-ſhot; in which he thought the Tin-man that was employed did not make ſuch Haſte as he ought to have done: As to the other Parts of the Works carrying on, he thought, that the People he happened to ſee working, went on pretty well. And further ſays, That he waited on the Pannel, along with the deceas'd Mr. *Maclaurin*, who was in a Tavern, (he thinks, but cannot be poſitive, that it was in the Evening before the Rebels entered the City); and deſired Orders, in Writing, to load the Cannon on the Walls. That the Pannel did not give Orders in Writing, but verbally ordered him to load them; and that Provoſt *Drummond* was then preſent, and ſaid, he would give Orders in Writing; which accordingly he did. And, upon a further Interrogatory, he recollects, that, upon the *Saturday*, a Number of Men were ordered by the Provoſt to aſſiſt him (as the Deponent heard, though he cannot tell to a Man, they were twenty four) to mount the Cannon; which accordingly was done, as far as the Deponent can recollect, from *Briſto* Port to the *Netherbow*; and that it was upon the next Day, being *Sunday*, he waited upon the Pannel, with Mr. *Maclaurin*, and received the verbal Orders above mentioned. In conſequence whereof, and of a written Warrant from Provoſt *Drummond*, the Cannon were accordingly loaded; the

the Deponent cannot ſay all of the Cannon; becauſe he came away about Eleven o' Clock at Night, and left the Towns-people at Work, at leaſt he left them there, upon the Cannon, when he came away; the Gunners which he brought along with him having returned to the Caſtle before he left the Towns-people. That a Sailor from *Leith*, who was ſaid to the Deponent to have ſkill in loading Artillery, was come to the Place where the Deponent was at Work; and it was ſaid to the Deponent, the reſt of the Cannon were to be loaded. And being interrogate, Why the Guns were not ſooner loaded? depones, That the Materials for loading them were not ſooner ready. And, being interrogate for the Pannel, Whether or not the Scaffolding, upon which the Cannon were placed, was ſufficient? depones, That he ſaw Boards upon which the Cannon were placed, to make them run upon; but no Scaffolding whereupon they were placed; the Swivels, which were placed upon the *Netherbow* and *Briſto* Ports, were to be fired by Men who were to ſtand upon Scaffolds placed there for that Purpoſe. And further depones, That, upon a Meſſage delivered by Bailie *Baillie*, and ſome other Perſons that came along, ſent to Gen. *Gueſt*, he ſent the Deponent, and ſome other Artillery-men, to the Town, to follow ſuch Directions as ſhould be given them by the Pannel concerning the Cannon: That, as the Deponent thinks, there were two Meſſages delivered to Gen. *Gueſt* concerning Gunners to be ſent down; but that he was ſent down but once with the Orders above ſet down, before the *Saturday* the Tranſactions whereof are above ſet forth. That, when they came down the firſt time, to clean

the Guns, they had no Orders from Gen. *Gueſt*, to attend upon the Walls, and to fire the Guns, but only to aſſiſt in planting them upon the Walls; nor does the Deponent know of any Gunners the Town had, excepting the Sailor above named: But that he was preſent, when Mr. *Macdairin* applied to one *Ferment*, the Maſter of a Veſſel at *Leith*, to aſſiſt in managing the Guns; but he declined it.

XXXIII. *Robert Brown*, Taylor in *Edinburgh*, depones, That, upon the 16th of *September*, in the Year 1745, the Deponent ſerved in the Trained Bands of *Edinburgh*, and was under the Command of Capt. *Hepburn*, and was placed at the *Weſt-port*; and continued there till Three o Clock, or thereabouts, in the Morning after. That their Captain having gone up to wait upon the Provoſt and Magiſtrates, as the Deponent believes, to receive Inſtructions from them how his Company was to be diſpoſed of; when he returned, he ſignified to thoſe under his Command, that his Orders were, That every Man ſhould repair to his own Houſe; and that thereupon they went off. And further ſays, That the Deponent having aſked his Captain, what ſhould be done with the Arms of his Company? he told them, his Orders were to leave them in that Place where they then were, which was a ſort of Guard-room; and told him, that his Half-pike was to be left there alſo. Accordingly, when they diſperſed, as above, they left their Arms there.

XXXIV. *Edward Inglis*, Druggiſt in *Edinburgh*, depones, That, upon the 16th of *September* 1745, he was a Soldier in the Trained Bands, in the Company

pany commanded by Capt. *Hepburn*, which was ſtationed at the *Weſt-port* about Eight of the Clock in the Morning of that Day, and remained there till about half an Hour after Three next Morning; when their Captain told them, That he had Orders from their Colonel, that is, the Pannel, to diſperſe, and leave their Arms in the Place where they kept their Guard-room. In purſuance whereof, they accordingly diſperſed, and left their Arms in the foreſaid Place. And deponed, That, about Five o'Clock *Monday* Evening before they diſperſed, the Deponent having heard from Capt. *Dalyell*, one of the Officers of the City-guard, that the Town was to be delivered up, he applied to Capt. *Hepburn*, and ſaid, That, ſince that was to be the Caſe, he thought the beſt Way for them, was to go to the Caſtle, and deliver in their Arms, and every Man to go to his own home; but the Captain anſwered, That they could not deſert their Station, and behoved to wait Orders from their ſuperior Officers.

XXXV. *Alexander Hepburn*, Merchant in *Edinburgh*, depones, That, upon the 16th of *September*, in the Year 1745, he commanded a Company of the Trained Bands in the City of *Edinburgh*. That he and his Company were planted as a Guard upon the *Weſt-port* about Eight o'Clock of that Morning, and continued upon that Station till about Three next Morning, when they diſperſed, and left their Arms in the Room where they kept Guard. And, being interrogate, By whoſe Orders they diſperſed, and left their Arms there? ſays, That he was ſent for, to come to the Provoſt and Magiſtrates, who were then in Mrs. *Clark*'s; he

believes he received the Meſſage by a Cadie. When he came to Mrs. *Clark*'s, where the Magiſtrates were, Mr. *Tennent*, the Captain-Commandant of the Trained Bands, chid him for having lingered ſo long upon that Station where he was; for that he had ſent for him, by one *George Wemyſs*, ſome time before that; that he and his Men ſhould diſperſe, and leave their Arms in the Room where they kept Guard. That the Deponent anſwered, He had received no ſuch Meſſage; but that he came now in obedience to a Meſſage from the Council; and now he attended, and deſired to know their Pleaſure: And that the Commandant, then, in the Preſence of the Provoſt and Counſellors, gave him Orders forthwith to diſperſe his Men, and to leave the Arms in that Room where they were keeping Guard; and that *John Hiſlop*, the Store-keeper of the Town, was that Morning to come and take away the Arms. That all the while the Deponent ſtaid in the Room, and while he was receiving the Orders from the Captain-Commandant, the Pannel's Head was lying on his Hand on the Table, and, to the Deponent's Apprehenſion, was aſleep. That the Deponent immediately left the Council, and returned to his Station at the *Weſt-port*; intimated thoſe Orders to his Men, and diſperſed them; who left their Arms in the ſaid Room where they had kept Guard. And, being interrogate, Whether, when he communicated his Orders to the Company, he had told them, That it was by the Lord Provoſt's Order that he had diſperſed them? ſays, That he cannot be poſitive; that it is poſſible he might have ſaid his Orders were from the Provoſt, becauſe the Council were all preſent when the Commandant

Commandant gave the Deponent his Orders. And depones, That, as Captain of the Company ſtationed at the *Weſt-port*, he ordered the Gates to be opened to the two ſeveral Deputations that were ſent by the Magiſtrates, and to the firſt Deputation when they were on their Return; but that the Guard was diſmiſſed before the Return of the ſecond Deputation. And further ſays, That he underſtood in general, that the Deputies were ſent out to make ſome Treaty or Capitulation; but, as to Particulars, he learned nothing from them, or any body elſe. That he cannot charge his Memory at preſent, nor can he recollect, that the Deputies told him any thing of their Errand going out, or the Anſwer of the firſt Deputation; and is poſitive, that none of the Men under his Command did that Morning, or the Day before, at any time, tell him of any Surmiſe of the Surrender of the City, or propoſe carrying their Arms to the Caſtle.

XXXVI. *Robert Tennent*, Merchant in *Edinburgh*, depones, That, upon the foreſaid 16th of *September*, he was Captain-Commandant of the Trained Bands of *Edinburgh*; and that he knows Captain *Hepburn*'s Company was placed at the *Weſt-port*; and that they diſperſed about Three o'Clock next Morning. And, being interrogate, By whoſe Orders they diſperſed, and left their Arms in the Guard-room? ſays, That, upon an Alarm brought in from the Street into the Laigh Council-houſe, ſome time in the Evening of the 16th, he cannot be poſitive as to the Hour, that the Highlanders had entered the City at the *Netherbow*, and were chaſing the Dragoons before them; it was thought

thought dangerous that the Trained Bands ſhould be found by the Rebels with Arms in their Hands: And therefore he, the Deponent, moved to the Provoſt and Council, that Orders might be given to the Men under the Officers of the Trained Bands, to lay down their Arms, and diſperſe; and that, upon this Motion, it was agreed by the Provoſt and Council, that ſuch Meſſage ſhould be ſent. In purſuance whereof, the Deponent ſent Capt. *Wemyſs* to the three ſeveral Companies; one whereof was poſted at the Weigh-houſe, and two at the *Weſt-port*, to ſignify to them the Provoſt and Council their Pleaſure to the foreſaid Effect. That, as it appeared afterwards, Capt. *Wemyſs* did not go to the Companies at the *Weſt-port*, but had gone only to the Company ſtationed at the Weigh-houſe; which, in conſequence of the Order he tranſmitted to them, diſperſed: But what they did with their Arms, the Deponent knows not. And the Council being informed by Bailie *Mansfield*, who had Occaſion to be at the *Weſt-port* that Morning, that Capt. *Hepburn* and his Company were ſtill there, they ſent for the Captain, and, upon his coming to Mrs. *Clark*'s, where the Council then were, the Deponent aſked him, in their Preſence, Why he had not diſperſed his Men ſooner, upon the Notice ſent him by Capt. *Wemyſs?* he replied, He had never received any ſuch Meſſage. And, upon an Interrogatory, the Deponent further ſays, That the Meſſage, as he underſtands it, ſent to Capt. *Hepburn* by the Council was, to diſmiſs his Men, and come up to them; and that he had actually diſmiſſed his Company before the Deponent ſaw him, as he the Deponent ſuppoſes; and that he does not know

what

what Orders were given to Capt. *Hepburn* anent the Diſpoſal of the Arms. And further depones, That, when Capt. *Hepburn* came to the Magiſtrates, the Deponent does not remember, and cannot be poſitive, whether the Pannel was preſent among them or not; he having about that Time been preſſed to go to Bed, and take a little Reſt; for he was fatigued, and faint. And, being further interrogate, Whether, when he the Deponent repreſented to the Council the Report that was heard at the Door, that the Highlanders had burſt in at the *Netherbow* Port, and were chaſing the Dragoons up the Street, any particular Orders were given as to the Diſpoſal of the Arms? depones, That he cannot be poſitive, further than that they were to lay down their Arms; and he ſuppoſed they were to leave them in the Place they kept Guard. And alſo ſays, That, after it was found that the Alarm upon which the Orders were ſent to the Companies to diſperſe was falſe, the Deponent did not think of ſending a ſecond Order, for he thought the firſt Order was executed: And as for the Arms, the Deponent does not know that any ſecond Orders were ſent concerning the Diſpoſal of them. And depones, That there are in all ſixteen Companies of Trained Bands: And that before *Sunday* there were never ſo many as three Companies on Duty, as far as the Deponent can recollect; but that then the three Companies were ordered upon Duty; and that three Companies continued to do Duty, till they were diſmiſſed, as above: And that the Deponent does not know, or remember, of any Orders given to *John Hiſlop* to gather up the Arms; nor that any mention of *Hiſlop* was made in his hearing

ing when Capt. *Hepburn* attended the Council. And, upon a further Interrogatory, depones, That, after it was agreed upon in the Goldſmiths Hall to have a Meeting in the New Church Iſle, the Pannel recommended it to all who were preſent to attend; and to deſire ſuch Burgeſſes as they met with to come there alſo; as alſo, to ſuch as were at the Head of any Corporation or Society, to take the Opinion of the Members of the ſame, whether it was proper to ſtand out and defend the Town. That thereupon the Deponent aſſembled the Officers under his Command in *John Roſs*'s Tavern; and the Captains were in one Room, and the Subalterns in another. That he aſked the Captains firſt, What their Opinion was concerning the defending of the Town; and they were all of Opinion, that, ſince the Dragoons had fled Eaſtward, and that ſome of the Voluntiers had begun to ſeparate, it was not practicable to defend the Town: And that, upon adviſing among the Subalterns concerning the ſame Propoſition, they were unanimouſly of the ſame Opinion; as it was reported to the Deponent by Mr. *Auchinleck*, who was his Lieutenant, from the Lieutenants; and by Mr. *Hutton*, his Enſign, from the Enſigns: And that he and his Officers, at leaſt a great many of them, attended the Meeting in the New Church Iſle. And further ſays, That the Deponent had received the Key of the Wicket of the *Netherbow* Port; but that, upon *Monday* Night, in Preſence of the Pannel and Council, the ſaid Key was by him delivered to Capt. *Hamilton*, to whom, at the ſame time, the great Key of the Gate was alſo delivered, in order to let out the Dragoons Bag-

gage;

gage; ſome of whom were left to take care of it, and made a very great Noiſe for it at the Time.

XXXVII. *John Dalgleiſh*, Watchmaker in *Edinburgh*, depones, That he was a Captain of the Trained Bands, on Duty upon the Evening of *Monday* the 16th of *September* 1745; and, between Seven and Eight o'Clock at Night, he received a Meſſage by one of the Town-officers, containing Orders to him to cauſe his Company lay down their Arms, and to diſmiſs them: Which he did not incline, on that Meſſage, to do; but ſent his Enſign, *William Sibbald* Taylor, with Orders to find out the Provoſt where-ever he was, and to acquaint him, and, if he could not be found, the Captain-Commandant, that he, the Deponent, had received the above Meſſage as from the Pannel, or ſome of the Council; and to inquire at one, or either of them, if ſuch a Meſſage was ſent? and what he ſhould do in relation to the Subject thereof? That his Enſign accordingly went, and returned to him between Eight and Nine o'Clock, with Orders, as from the Pannel, to diſmiſs his Guard, and lay down their Arms: And the Deponent being then ſtanding at the Door of the Weigh-houſe, which was his Poſt, and where he had planted two Centries, his Men ruſhed out upon him, leaving their Arms behind them. And depones, That he received no Direction from any Perſon in what manner theſe Arms ſhould be diſpoſed of, or ſecured. Depones, That he firſt mounted Guard upon the Evening of the Faſt-day, which was held two Weeks before the Rebels came to Town; and mounted Guard again, upon the 16th Day of *September*, about Seven o'Clock in the Morn-

ing; and, juſt before that, ſaw the Pannel in the Goldſmiths Hall, who acquainted the Deponent, that he would get Powder and Ball, and Cartridge-boxes, from *John Hiſlop*, the City Store-keeper. That, about Nine o'Clock, he ſent to Mr. *Hiſlop*, deſiring to have them; but he not being in the way, the ſaid Ammunition was not brought till about Eleven o'Clock, when as much as was thought would be uſeful was delivered to him for his Company. Being interrogated for the Pannel, depones, That, betwixt Nine and Ten of the *Sunday* Morning the 15th, the Officers of the Trained Bands were called by the Captain-Commandant, by the Pannel's Orders, to the Crown Tavern, where he, and the reſt of the Captains, who were all in one Room together, received Orders from their Commandant, to be ready to draw out their Companies on a Minute's Warning, which each Captain communicated to his Subalterns; with Orders, to ſuch of them as were there, not to leave that Tavern, without leaving word where they might be found. That, about Three of the Clock of the Afternoon of this Day, the Captains got Orders to repair to their reſpective Bounds, and draw out their Companies; which they accordingly did: And then the Deponent's Company had Arms diſtributed among them; and, as far as he could obſerve, Arms were delivered to the other Companies: And that, before the Companies were diſmiſſed, they received Orders to be ready to march at Tuck of Drum.

XXXVIII. *Mark Sandilands*, Merchant, and late one of the Bailies of *Edinburgh*, depones, That he was one of the aſſociated Voluntiers, who, on the

the 7th of *September*, proposed to publish a Paragraph in the *Edinburgh Courant*, on the *Monday* following, containing an Account of the Steps taken for Defence of the City of *Edinburgh* against the Rebels: That he shewed a Copy of the Paragraph, as concerted, to the Pannel, some others of the Voluntiers being in Company, which contained Words to this Purpose, 'By the Advice of the 'Crown-lawyers, he chearfully accepted of the 'Offer of their Service,' (which referred to the Voluntiers); and the Pannel said, He could not agree to that Draught, because it was not true: And it was amended by the Pannel's Direction; and after the Words, *Advice of the Crown-lawyers*, it was made to run, *he acquiesced in, and accepted of their Service*; giving this for his Reason, That he differed in Opinion with the King's Lawyers; for, as the Law stood, he thought it was unlawful to take up Arms, without the special Warrant of his Majesty. Depones, That he was present when Bailie *James Stewart* proposed to send to the King's Ships in the Road, to desire to have some Sailors, accustomed to fire Cannon, for serving the Cannon mounted on the City-walls; which the Pannel did not relish; because, he said, they would be rash, and they would fire on Friends, as well as Foes: And, being interrogate, If, when the Pannel did not approve of said Proposal, he mentioned any other? depones, He does not remember.'

XXXIX. *George Dunbar*, Merchant, and late Bailie of *Edinburgh*, depones, That the Paper, N° 8. annexed to the criminal Letters, was framed by the Deponent, and some other Citizens, betwixt

One and Two Afternoon, of the 16th of *September* 1745; and that, while they were in the Courſe of ſigning it, Bailie *Gavin Hamilton*, and Bailie *Robert Baillie*, ſent *George Lindſay* for the Deponent, to aſk him, What ſort of a Paper it was to which he was procuring Subſcriptions? That the Deponent went, and explained the Subſtance of it; and ſaid he would give them the Scroll of it; which he ſent for, and delivered to them; and, after reading it, they were well pleaſed with it; ſaying, They believed it to have been a Paper of another Nature. That the Deponent went along with them to ſome more of the Council aſſembled in the Goldſmiths Hall, where the ſaid Scroll was delivered to Dean of Gild *Hatborn*. That, about Three o'Clock of this Day, he met the Pannel at the *Stinking Style*, and put the ſaid Paper, then ſigned by a great many of the Inhabitants, in the Pannel's Hands; relating to him, at the ſame time, the Subſtance of it; and he promiſed to lay it before the Magiſtrates and Council. The Deponent attended him to the Goldſmiths Hall; and, as they were entering the Door, a Crowd of the Subſcribers ruſhed in behind them; at which the Pannel was vaſtly offended; and, turning about, ſaid, What, Gentlemen, think you to compel me to grant the Deſire of your Petition by Force? Upon which the Deponent endeavoured to ſtop, and pacify them, and went down Stairs, the Bulk of them following him to the Parliament-cloſe; where he remained for ſome little Time, and until he received a Meſſage from Capt. *Hepburn*, who commanded the Company of the Trained Bands in which the Deponent, who was a private Man, ſerved. That his

Company

Company was mutinying, becauſe the Voluntiers were going to lay down their Arms; that this was before the Fire-bell rung. That when, in obedience to the Captain's Commands, he went to the *Weſt-port*, he found a Diſorder among the Men of the ſaid Company upon the Account foreſaid; to whom the Deponent addreſſed himſelf much to this Purpoſe: Let the Voluntiers do what they will; let us remain upon our Duty, till we ſhall receive the Lord Provoſt our Colonel's Commands; and I will ſtand by you as long as I can carry a Muſket. That, about Four o'Clock, he ſaw that Part of the Town-guard, which had gone out to ſupport the Dragoons, ſtanding in the *Graſs-market*, ſome of them under Arms, and the Arms of others grounded; and this in his Way to Capt. *Hepburn*. Depones, That, betwixt Four and Five o'Clock at Night, the Pannel, with ſome other of the Magiſtrates, came to the *Weſt-port*, attended by Mr. *Maclaurin* and *John Scot* Plumber, and gave Orders to ſhut the Ports; to let in any Soldiers or Dragoons that ſhould come there, but no Stragglers or Strangers; to let in any Forage that ſhould come for the Dragoons, or Perſons having Meſſages to the Magiſtrates; and to prime and make ready the Cannon planted at the *Weſt-port*: All which Things that required immediate doing, were done. That the Charge of the Cannon was given to the Captain of the Trained Bands, and to the Captain of the Town-guard; but he obſerved no Gunners there; and *Scot*, who, in conjunction with Mr. *Maclaurin*, had primed the Cannon, ſtaid by them for ſome time; he does not know how long. And, being interrogated for the Pannel, depones, That, by Capt. *Hepburn*'s Order,

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as from the Pannel, he the Deponent, and three more of the Guard, mounted the Town-wall by a Ladder, to obſerve if they could ſee any of the Dragoons coming; where they remained two Hours; but none came in but one. That the Deponent ſtaid on Guard till about Two o'Clock in the Morning; when he went up to Mrs. *Clark*'s, where the Magiſtrates and Council were, to acquaint them, that they would do well to ſend ſome of the Soldiers of the City-guard to take care of the Cannon, which were primed, and People with Flambeaux going near them; and he received for Anſwer from the Magiſtrates, That they would be taken care of. That the Pannel was not then in the ſame Room with the other Magiſtrates and Council, but in another Room, as he was told, ſleeping. That he did not return to the Guard again, but remained a conſiderable Time with the Magiſtrates. That the Deponent, before he left the Guard, ſaw the Gentlemen of the firſt Deputation from the Magiſtrates and Town-council to the Rebels go out, and return; and ſaw the Gentlemen of the ſecond Deputation go out in a Hackney-coach; but thoſe of the firſt went out on Foot.

XL. *Richard Lindſay*, late one of the Bailies of *Muſſelburgh*, depones, That he did aſſiſt in getting together betwixt 140 and 150 Men in the Town and Neighbourhood of *Muſſelburgh*, to be employed in the Defence of the City of *Edinburgh*; and, upon *Sunday* the 15th *September*, marched them near to *Criſtal*'s; where Sir *Robert Dickſon*, a former Witneſs, received them, and marched them that Night into Town. The Deponent returned to *Muſſelburgh*,

Muſſelburgh, and next Morning came into *Edinburgh*; and, about Nine o'Clock in the Morning, waited on the Pannel, and acquainted him, then in the Goldſmiths Hall, that the ſaid Men, who were quartered in the New Church Iſle the preceeding Night, were turned very impatient to be properly employed for the Defence of the City, for which End they had come; and that he wanted to have them delivered off his Hands. That the Pannel thanked him very much, and told him, he would ſend one to receive them immediately. That the Deponent returned to the New Church Iſle to keep his Men together, where he remained about the Space of half an Hour; and, at their Deſire, he again waited upon the Pannel at the Goldſmiths Hall, and acquainted him, that the Men had grown ſtill more impatient, and deſired they ſhould be taken off his Hand: Which the Pannel ſaid ſhould be done immediately; and ſent for a Man that could not be found: Whereupon the Pannel deſired him to return, and keep his Men together, and he would ſend one immediately to receive them. That he accordingly did return; and, after ſtaying about a Quarter of an Hour with the Men, who begun to blame him for bringing them to Town, he waited a third Time upon the Pannel, repreſenting, as above; and the Pannel ſeeming to be very much ſurpriſed that no body had come near him, deſired the Deponent to return to his Men, and that what he inſiſted for ſhould forthwith be done. That, ſoon thereafter, one of the Bailies, *Yetts*, he thinks, and a Serjeant of the City-guard, came; that they caſt ſome of the Men, and ſwore the reſt to be faithful to his Majeſty; which laſt were delivered over to the

the Care of the ſaid Serjeant, and a good many of the former liſted with the *Edinburgh* Regiment, as they themſelves told him. That he knows nothing of their having received any Arms; and that the Bulk of them returned that Night home.

XLI. *Robert Baillie*, Merchant, and late one of the Bailies of *Edinburgh*, depones, That, upon the 16th of *September*, there was a Motion made in Council, where the Pannel was preſent, That the City-arms ſhould be ſecured, by ſending them up to the Caſtle. That the Members of it were divided in their Opinion, and the Majority of them thought that no Orders ſhould be made for that Purpoſe; and that the Pannel ſeemed to be of the Opinion of the Majority; and that it appeared to him, that there was an evident Majority for the foreſaid Opinion, though no Vote was put; and it was from what the Pannel ſaid, that the Deponent took him to be of the Opinion of the Majority: And that the Pannel, according to his uſual Cuſtom, aſked the Opinion of ſeverals before he ſpoke on the Subject himſelf: And that it is the common Practice of the Provoſt of *Edinburgh* in Council, when any Propoſition is made, to aſk the Opinion of five or ſix, or ſometimes more, of the Council; who, if they give it all one Way, he uſually declares it to be the Senſe of the Council, unleſs a Vote is demanded. That, in the preſent Caſe, though there was a Difference in Opinion, yet no Vote was inſiſted for; and, as the Majority had given the Opinion above mentioned, in conſequence thereof he refuſed to give the Order.

XLII. *Hugh*

XLII. *Hugh Hathorn*, late Dean of Gild of *Edinburgh*, depones, That he does not remember, that the Pannel told him the Meſſage that was delivered him by *Andrew Alves* from the Rebel-army; and thinks he did not hear of it till about the Time, or a little before *Andrew Alves* was committed Priſoner. And depones, That he was preſent in the Goldſmiths Hall, both before the Meeting in the New Church Iſle, and afterwards in the Council-houſe; in both which Places, the Goldſmiths Hall and Council-houſe, there was a great many of the Council preſent; that there was alſo a great many other People who did not belong to the Council; and in neither of theſe Metings does the Deponent remember any Propoſal to have been made for ſecuring the Cloy-arms in the Caſtle of *Edinburgh*. But remembers to have heard a Meſſage ſent, as the Deponent thinks, from ſome of the Out-guards about the Ports of the Walls, to know what they ſhould do with their Arms? And the Reaſon why this Meſſage was ſent, the Deponent believes to have been, That it was publickly talked, that the Volunteers, before this Time, had delivered up their Arms; and the Anſwer made to this Meſſage was, That they ſhould ſecure them the beſt Way they could; and the Deponent thinks this Anſwer fell to be made by the Pannel, as he was in the Chair. And, being interrogate for the Pannel, Whether this Anſwer was given as being agreeable to the Mind of the Council? depones, He did not hear the Opinion of any of the Council aſked, nor did hear any of the Council contradict it. And depones, That the Provoſt of *Edinburgh* cannot of himſelf, as he thinks, give out any of the Town's

Arms to be used by the Inhabitants, without a previous Conſent of Council; and he knows that the Fact is, when any of the Arms are given out, it is always done by an Order of Council.

XLIII. *James Murray*, Eſq; Receiver-General of the Cuſtoms of *Scotland*, depones, That, upon *Saturday* the 14th of *September* 1745, he received a Letter from Mr. *Drummond*, now Lord Provoſt of *Edinburgh*, deſiring him to come forthwith to the City of *Edinburgh*; and that at the Requeſt of the Pannel: And the Deponent accordingly that Night came. That the Deponent met the Pannel in the Street, and aſked his Commands. He deſired the Deponent to go to the Lord Juſtice-Clerk's; where he inſtantly went, and was followed in two Minutes by the Pannel. That there the Deponent was told, whether by the Pannel, or the Lord Juſtice-Clerk, he cannot tell, being both preſent, that the Rebels were within two Days eaſy March of the Town; and, as it was propoſed to defend it, they deſired the Deponent would give his Advice and Aſſiſtance. To which he anſwered, That it was his Duty and Inclination to do every thing in his Power for the King's Service. After this Provoſt *Stewart* and the Deponent went to the Street; and the Pannel told him, there were ſeveral Town's Gentlemen met in a Tavern, and deſired he would go there. That accordingly they went together; and Mr. *Drummond*, now Lord Provoſt of *Edinburgh*, who was there, told the Deponent, they had ſent to him for his Aſſiſtance in the Defence of the Town; and, as they were ignorant of military Matters, and convinced that the Deponent underſtood

more

more of them than they did, hoped he would give them proper Directions how to diſpoſe of the Men they had in Arms, in the beſt Manner for the Defence of the Town: Then they told the Deponent their Numbers, which, ſo far as he remembers, they ſaid, might be about 11 or 1200; but cannot be poſitive. That the Deponent dictated to them the Method of diſpoſing their Guards; and ſome Rules of Diſcipline they were in that Hurry to obſerve; Guards to be immediately placed, Alarm-poſts aſſigned, and, beſides, continual Patroles. There were ſeveral Rounds appointed for that Night; and the Pannel was to go the grand Round after Midnight. That Orders were inſtantly given for diſpoſing every thing according to thoſe Directions. That the next Morning the Deponent went with Mr. *Colin Maclaurin* to viſit the Walls, and Stations of the Guards; and ordered Barricadoes at the Gates. That, about Mid-day, he, the Deponent, coming to the Streets, met the Pannel, who told him, he had gone the grand Round, and was ſorry to tell the Deponent, that, notwithſtanding the ſtrict Orders given, he neither found the Guards nor Centries alert; but that they were huddled together, under the Shelter of the Wall. That the Barricadoes were immediately ſet about, and, by Night, pretty far advanced. That next Day, being *Monday*, the Dragoons, and City-guard, marched out of Town Weſtward; but about Four, or a little before Four in the Afternoon, they returned in ſome Hurry, and the Dragoons retired towards *Leith*, and the City-guard retired in good Order to the Town. That the Deponent obſerved this threw a Damp on the Spirits of the Inhabitants, who, till

then, had ſhown a good Countenance. That the Pannel, with many other Gentlemen, aſſembled in the Goldſmiths Hall, ſent for the Deponent. That the Deponent went immediately; and the Pannel made him ſome Compliments, and then aſked him, if he thought the Town tenible? The Deponent told him, They had Hands enough; but that the Pannel, and the other Gentlemen preſent, were beſt judges of their Hearts: But that, if they entertained any Thoughts of delivering up the Town, they were not to add to that Reproach, the Crime of delivering the King's Arms to the Rebels. And, being interrogate, Whether any Mention was made by himſelf, or others in the Company, concerning the City-arms? depones, That he did not at that Time know, that the City had any Arms properly belonging to itſelf, other than what ſerved the City-guard. And that, after he left the Goldſmiths Hall, having ſtill ſome Confidence that the Town was to be defended, he went to his Houſe, loaded his Piſtols, put them in his Pockets, and came to the Street; where, obſerving a Party of armed Men marching up the Street, he aſked them, where they were going? They anſwered, To the Caſtle to deliver their Arms. Upon which the Deponent went to the Goldſmiths Hall, and, with great Difficulty, got Acceſs, and deſired of the Pannel, that he would order the *Netherbow* Port to be opened to let the Deponent out of Town; that he being an Officer of the Revenue, it was unſafe for him to ſtay any longer; which the Pannel ordered accordingly. And, being interrogate for the Pannel, If the Deponent heard him expreſs his Opinion anywiſe for defending the City? depones, That the

first

firſt Time he came to the Goldſmiths Hall, he heard the Pannel ſay, That, if the Town was to be defended, he would do his Duty, if he was to leave his Bones on the Walls: And he appeared to the Deponent to be very warm for the Defence of the Town; but that there was ſuch a Confuſion, he could not hear all that the Pannel ſaid.

XLIV. *David Lindſay*, Writer in *Edinburgh*, depones, That he ſerved as Lieutenant in Mr. *Drummond*, now Lord Provoſt of *Edinburgh*, his Company of Volunteers; and, being in the *Lawn-market* with the ſaid Company after the Reſolution was taken by the different Officers of the Volunteers, the Deponent was ſent by Mr. *Drummond*, as he thinks, to Gen. *Gueſt*, to acquaint him, that the Volunteers were immediately to come up to the Caſtle, and deliver up their Arms; for that no good could be done by keeping them; for that the Town was to be delivered up. That, upon his coming to the Caſtle, he met with Major *Roberton* at the Caſtle-gate; who aſked the Deponent, Where he was going? To which he made Anſwer, That he was going to Gen. *Gueſt*. The Major then ſaid, May I aſk you what may be your Buſineſs? To which the Deponent made Anſwer, That he was come, at the Deſire of Mr. *Drummond*, to deliver the above Meſſage. To which Mr. *Roberton* anſwered, That the General knew all that already; and he expected them, without Loſs of Time; and deſired him go back directly, and tell Mr. *Drummond* ſo much; which the Deponent accordingly did; and thereafter the Volunteers marched up, and delivered in their Arms.

XLV. *John*

XLV. *John Hyſlop*, Store-keeper of the City of *Edinburgh*, depones, That, in the Month of *September* 1745, the Deponent was Keeper of the Town of *Edinburgh*'s Magazine, where their Arms and Ammunition were laid. That, at that Time, there was in the Magazine 1250 Firelocks, beſides 200 that were inſufficient; by which he means altogether uſeleſs; and of the 1250, there was a great many that the Deponent would not give half a Crown the Piece for; and the moſt of theſe were very old, but could fire: And beſides, there was in the Magazine not quite 200 Bayonets, and about 300 Cartridge-boxes in bad Caſe. That of Ammunition, there was about two Boxes, and a Bag with ſome looſe Ball, and no Gun-powder; but that, in the Beginning of *September*, the Deponent got from the Powder-houſe 400 Weight of Powder. That, beſides the above Arms that belonged to the Town of *Edinburgh*, there was the Arms of the City-guard of *Edinburgh*, conſiſting of 75 Firelocks, Bayonets, and Cartridge-boxes. That the Powder and Ball was made up into Cartridges: And of the above Arms, there was 100 ſent to *Leith*, but returned again to the Magazine, on *Monday* the 16th of *September*. That, by the Pannel's Orders, the Deponent gave, upon *Sunday* the 15th, betwixt 50 and 60 Firelocks to each Company of the ſixteen Companies of Trained Bands, except the *Canongate-head* Company, who got but about 24; and that 39 Firelocks were given to the 39 additional Men of the City-guard. And, upon *Monday* the 16th, the Deponent having got Orders from ſometimes the Pannel, and ſometimes the Magiſtrates, being all his Maſters, gave accordingly

Cartridges

Cartridges to those who came for them; and, particularly, he gave 500 Cartridges to each of the three Companies of the Trained Bands who that Day kept Guard; and a good deal to the Seceders, who kept Guard at the Infirmary. That, before the said 16th of *September*, all the Powder which was in the Powder-house, was sent up to the Castle by Order of the Pannel: And, by the Pannel's Orders, on the said 16th, the Deponent got back from the Castle 425 lb. Weight, for the Use of the Cannon that were planted on the City-walls, and for Cartridges; and the Deponent gave it out for charging the Cannon, and he gave Cartridges to such as called for them: And the whole Ammunition was given out, except about a 50 lb. Barrel. That, with respect to the Arms that were not given out, and the above Quantity of Powder, he received no Orders from the Provost, or any body else; and the Firelocks which he gave out, as above deponed upon, were never again returned to him. That, upon the 16th, the Deponent laid by the Keys of the Magazine, the Armoury, and the Wardrobe, in some secret Place, which his Servant *Alexander Dryburgh* knew. And, upon the 17th, after the Rebels got Possession of the City, he stepped aside, not thinking it proper to keep his own House; and the Account which his said Servant gave of the Keys afterwards was, That the Rebels threatened to break open the Doors of the Magazine, Armoury, Council-house, and Wardrobe; and therefore Bailie *Mansfield* came to *Alexander Dryburgh*, and advised him to deliver up the Keys of the above Places; which he accordingly did: And the Day thereafter the Deponent saw the Rebels carrying down Arms

on

on their Shoulders along the Streets, which he apprehended to be the Arms belonging to the Town of *Edinburgh*. And depones, He got no Orders for ſecuring, or bringing back the Arms which he had given to the three Companies of the Trained Bands that were upon Duty upon *Monday* Night the 16th; and that he was ſo fatigued, by ſitting up three Nights before, that he was not able to ſit up longer. And depones, That, after the Rebels had carried off the Arms, as above deponed upon, they delivered the Deponent the Keys of the Magazine, which was about fourteen or twenty Days after they entered the City. And, upon the Deponent's going in to the ſaid Magazine, he found no Arms there, except a few of the broken Guns above mentioned; and even theſe were afterwards carried off by them. And, being interrogate for the Pannel concerning the Spades and Shovels that were brought to the Magazine on *Monday* the 16th, depones, That, on that Day, there were four Carts of Shovels and Spades, belonging to *William Millar* Seedſman in the Abbey, ſent up to the Magazine; and the Carter ſaid to the Deponent, that Bailie *Hamilton* deſired that he might take them under his Care and Cuſtody; and the Deponent accordingly did ſo: And that on *Sunday*, the 29th of *September*, the Rebels came, and carried them off down to the Abbay; but, upon the Proprietor's making Application for them, the Deponent heard him ſay, that he afterwards got them back.

XLVI. *Alexander Dryburgh*, Servant to *John Hiſlop* the preceeding Witneſs, depones, That, in the Month of *September* 1745, upon *Monday* the 16th

16th Day, in the Evening, he knew, that his Maſter, *John Hiſlop*, had ſecreted the Keys of the Town of *Edinburgh*'s Magazine and Store-houſes below a Form in the Council-houſe. And, upon the 17th, after the Rebels had entered the City of *Edinburgh*, and wanting Acceſs to the Council-houſe, they threatened to break open the Door; and the Deponent, by Accident, meeting Bailie *Manſfield*, who knew that he had the Key of the Council-houſe, deſired the Deponent to give the Key to the Rebels, rather than have the Door broke open; which he accordingly did. And, after the Rebels had got Acceſs to the Council-houſe, they found out the Keys of the Magazine, Armoury, and Wardrobe, out of which they carried off all the Arms that were then to be found there; the Deponent having ſeen the very Arms carried down the Streets in Carts, and on Mens Shoulders; and that, when the Keys were again reſtored to his Maſter, and the Deponent had occaſion to enter into the Armoury, he ſaw no Arms there.

XLVII. *Thomas Dalyell*, one of the Captains of the City-guard of *Edinburgh*, depones, That, in *September* 1745, the Deponent was one of the Captains of the City-guard, which then conſiſted, including Officers and Soldiers, of 126 Men. That, about Ten o'Clock of *Monday*, the 16th of *September*, the Deponent, by Order of the Pannel, marched out with the whole Guard to the *Colt* Bridge, leaving only a few of the Men behind to make up Cartridges. That they remained at the *Colt* Bridge till about Three o'Clock Afternoon, when, by Order of the commanding Officer of the Dragoons,

they marched back to Town, and went to the Court of Guard; where they received Orders from the Pannel, which was brought them by Mr. *Orrock*, to march two Squads of the Guard to the *Graſs-market*, and to leave the other Squad at the Court of Guard. That the Deponent accordingly marched with the two Squads to the *Graſs-market*, and received from the Pannel the Key of the Wicket of the *Weſt-port*, with Orders to allow no body to go out, or come in, but ſuch as he could be anſwerable for. That the Deponent, and his Party, remained in the *Graſs-market* till about Eight o'Clock at Night; and, about Seven o'Clock, as the Deponent thinks, he ſaw Bailie *Pitts*, Bailie *Hamilton*, and ſome others, come from the Town to the *Weſt-port*, who, he was told, were a Deputation ſent to the Rebel-camp; but, ſome time before that, the Deponent had given the Key of the Wicket to one of the Captains of the Trained Bands, *Alexander Hepburn*, who then kept Guard at the *Weſt-port*. That, about Eight at Night, Capt. *Maitland*, another of the Captains of the Town-guard, brought the Deponent Orders from the Pannel to march his Men to the Court of Guard; which the Deponent did. And it being his Turn to be upon Guard that Night, he then went to the Pannel to receive his Orders what Guard he deſired to be kept that Night; and the Pannel ordered him to keep the ordinary Guard, which is a Squad, or a third Part of the Company, which then conſiſted of 126 Men; but the Deponent actually kept upon Guard 50 Men: And, by the Pannel's Orders, he ſent a Detachment of theſe to keep Guard at the *Netherbow* Port; the Voluntiers, who had kept

Guard

Guard there formerly, having left it. That the Detachment he ſent firſt, conſiſted of 14 Men; but, as he was afterwards informed, that theſe had got themſelves drunk, he was forced to change them; and, at laſt, that Guard was reduced to the Number of ſix Men; which was all that the Deponent could find that were fit for doing Duty. That the Deponent received Orders from the Pannel, not to ſuffer any body to go out or come in at the Port; but, upon Recollection, ſays, That theſe Orders were not given to the Deponent, but were carried by one *Henderſon* to the Serjeant of the Guard in the Deponent's Abſence, and by him ſent with the ſaid Detachment to the *Netherbow*. That the Deponent went to his own Houſe about Four o' Clock, and did not ſee the Rebels come in at the Port; but was told by his Men at the Port, that, before Five o' Clock, a Coach having come down the Street, and gone out at the Port, the Rebels took that Opportunity of ruſhing in, and ſeized the Centries, and took their Arms from them; and then marched up to the Court of Guard, and ſeized ſuch of the Men as they could lay Hands on there, and took their Arms from them. That the Deponent ſoon after went in queſt of the Pannel, to report what had happened. That he found the Pannel in a Tavern in the Writers Court, he thinks Mrs. *Clark*'s; and in Company with him he found a Rebel-officer, whom he afterwards knew to be *Sullivan*; and together with them, the Deponent thinks, Bailie *Yetts*, and ſeveral others of the Council; and the Deponent reported to the Pannel what had happened to his Guard. Depones, That the Guard-ſoldiers had been greatly fatigued for ſeve-

ral Days before, and had been under Arms by Four o' Clock in the Morning of *Monday* the 16th; ſo that, when, at Night, the Deponent marched his Men from the *Graſs-market* to the Court of Guard, a great many of them were unfit for doing Duty. And, being interrogate for the Pannel, depones, That he had occaſion to obſerve the Town's Arms belonging to their Magazine, having picked out what he thought the beſt of them, in very bad Condition, ſeverals of them not fit for Uſe; many of them that would indeed fire, but of theſe, many that would not keep Priming. Depones, That, upon *Sunday* the 15th, the Deponent, with about 90 of the Town-guard, and a Detachment of about 50 of the *Edinburgh* Regiment, marched out towards *Corſtorphin* to ſuſtain the Dragoons; and, after they had paſſed the *Colt* Bridge in their Way to *Corſtorphin*, there came up to them firſt one Mr. *Lindſay*, and afterwards one *Ormiſton*, who is a Copperſmith in the *Weſt-bow*, and told them, that it was the Provoſt's Orders that they ſhould halt there: But thereafter Mr. *Henderſon*, who writes in the Council-chamber, brought them Orders from the Provoſt to march forward to *Corſtorphin*, and there to take their Orders from Col. *Gardiner*. And, being further interrogate for the Pannel, depones, That, when the Pannel, on *Sunday* Morning the 15th of *September*, ordered the Deponent to march to *Corſtorphin* to ſuſtain the Dragoons, the Deponent ſaid, If he ſent them there, he ſhould provide them in better Arms; for their Arms were not fit for Service. Upon which the Pannel deſired the Deponent to go to the Magazine, and pick out for them the beſt Arms he could find. But the

Deponent

Deponent anſwered, That there were no Arms in the Town's Magazine that he could depend upon. Upon which the Deponent got for his Guard the Arms that had been got for the *Edinburgh* Regiment, which were new Arms, and, as he ſuppoſes, had been got out of the Caſtle; and theſe were the ſame Arms that the Town-guard had when the Rebels entered the Town, and were taken from them. And, upon a further Interrogatory, depones, That he did not get the whole Number of Arms himſelf from the Armoury; but, having got the Pannel's Allowance, he gave Orders to his Men, that ſuch of them as thought their Arms not ſufficient, ſhould go to the Armoury, and leave them there, and take others in place of them. That the whole of them did not change their Arms, but the Bulk of them; and he believes about four fifths of them went to the Armoury, and changed their Arms, as he directed.

XLVIII. *James Tait*, Goldſmith in *Edinburgh*, depones, That, in *September* 1745, both before and at the Time the Rebels entered the City of *Edinburgh*, the Deponent was Keeper, and had the Keys of the *Netherbow* Port; but the Night before the Rebels entered, that is, the *Monday*'s Night, the Deponent was obliged to go to Bed at Eleven o'Clock at Night, having been kept out of Bed the two preceeding Nights with the Voluntiers; and that *Monday*'s Night he committed the Charge of the Port to his Servant *James Gilleſpie*, whereby it happened that the Deponent was a-Bed on the *Tueſday*'s Morning when the Rebels entered the Port; and knew nothing of them, till he was raiſed out

of Bed, and ſaw them in the Town. That the Deponent received no Orders, either on the *Monday* Night, or any preceeding Night, about the Manner of keeping the Port; it being the ordinary Cuſtom, to open the Port as People called either going out or coming in; but, upon the *Monday*'s Night, the Deponent left at the Port ſix of the Town-guard Soldiers, beſides his above Servant *James Gilleſpie*.

XLIX. *James Gilleſpie*, Servant to *James Tait* the preceeding Witneſs, depones, That, in *September* 1745, when the Rebels entered the City of *Edinburgh*, the Deponent was Servant to the preceeding Witneſs Mr. *Tait*, and Keeper of the Port under him. That, upon *Monday*'s Night, the 16th of *September*, Mr. *Tait* left the Charge of the Port to the Deponent, and gave him Orders, whatever Chairs or Coaches were entering the Town, or going out, to open the Port, and let them paſs. That the Deponent attended the Port that Night, together with ſix Centries of the Town-guard Soldiers; and, betwixt Four and Five in the Morning, a Coach came down the Street, in order to go out at the Port; and the Deponent, agreeable to his Orders, opened the Port, and let it paſs; and, after the Coach was paſt, the Deponent ſhut one of the Leaves of the Port; but as he was ſhutting the other, the Highlanders ruſhed in upon him, and beat him back, and then poſſeſſed themſelves of the Port, and entered the Town. Depones, That no body offered to ſtop the Coach from going out: That he knows not whether any of the Centries ſpoke with the Coachman; but he obſerved him

ſtop

ſtop a little talking with one of the Waiters at the Port of his Acquaintance. And depones, That he did not ſay to any of the Soldiers that he had Orders to let out that Coach; nor could he, ſince he had no other Orders but the general Order above mentioned; nor did any of the Soldiers ſtop him from letting out the Coach. And depones, That the Deponent had no particular Orders from the Pannel, or any of the Magiſtrates or Council concerning the Port.

L. *Alexander Corſar*, one of the Soldiers of the City-guard of *Edinburgh*, depones, That, upon the Night of *Monday* the 16th of *September* 1745, he was upon Guard as one of the Soldiers of the City-guard; and, at Four o' Clock on *Tueſday*'s Morning, was ordered, with five or ſeven more of his Brother-ſoldiers, by the Serjeant of the Guard, to go to the *Netherbow* to guard it, and to relieve the like Number of Soldiers that were there before; and the Serjeant of the Guard ordered the Deponent not to permit any Perſon whatever to go out or come in at the Port. And the Deponent accordingly marched, and relieved the Guard at the Port: And in about half an Hour thereafter, the Deponent, obſerving a Coach coming down the Street, ſent two Men to meet, and ſtop it at the *Fountain-well*; but, as the Coachman would be forward, the Deponent went up, and ſtopped it himſelf. That the Coachman ſaid, He behoved to get out at the Port; but the Deponent ſaid, He ſhould not get out, unleſs he had an Order from Provoſt *Stewart*. The Coachman ſaid, He had no Order from Provoſt *Stewart*, but that Provoſt *Coutts* had ordered him

to

to be let out. The Deponent answered, Provoſt *Coutts* had now no more Power to give ſuch Order, than any other private Gentleman; and he ſhould not get out, without Provoſt *Stewart*'s Orders. Upon which the Under-keeper of the Port, who was *James Gilleſpie* the preceeding Witneſs, came up, and ſaid, That he had an Order to let out that Coach, but did not ſay from whom he had it. Upon which the Deponent anſwered, O Sir, it is very well if you have an Order to let it out; you have the Keys of the Port, you muſt anſwer for it, and I have nothing to ſay. And, being further interrogate, depones, That the Under-keeper had no Diſcourſe with either the Coachman or the Poſtilion, before he told the Deponent that he had an Order to let out the Coach. Depones, That then the Port was opened, and the Coach drove out; and was not paſt the Deponent two Yards, when the Highlanders ruſhed in, and *Lochiel* gripped the Deponent by the Arm.

Then the Lord Advocate declared his Probation to be concluded.

Follows a Liſt of the Witneſſes Names and Deſignations cited for Mr. Stewart.

N. B. *Only thoſe marked thus * were examined on the Pannel's Exculpation, and ſuch as are marked thus † were cited both by the Proſecutor and the Pannel.*

Thomas Allan, Eſq; Merchant, and Dean of Gild of *Edinburgh*.
John Aitken Bookſeller there.
William Aman Sheriff-officer there.
Alexander Brown Merchant there.
Charles Butter Wright there.
Hary Barclay of *Collerny*, Eſq;

* David

David Baird Merchant in *Edinburgh*.
John Brown Servant to Archibald Inglis Pewterer there.
Charles Banks Stabler there.
* Thomas Cochran, Eſq; one of the Commiſſioners of Exciſe in *Scotland*.
James Cleland Vintner in *Edinburgh*.
Mr. Patrick Cuming Miniſter of the Goſpel there.
Thomas Cuming Fleſher there.
William Cramond one of the City-officers there.
Ralph Dundas Merchant there.
Robert Dundas Merchant there.
Thomas Dundas junior Merchant there.
John Douglas Armourer there.
Ronald Dunbar Writer to the Signet.
Robert Davidſon Tackſman of the Meal-market of *Edinburgh*.
John Dunſmore Merchant in *Edinburgh*.
Charles Dickſon Goldſmith there.
Michael Elphinſton late Store-keeper to the Caſtle of *Edinburgh*.
Alexander Erſkine Carter in *Edinburgh*.
Simon Fraſer White-iron Smith there.
Robert Forreſter Merchant there.
John Forreſt Merchant there.
John Ferguſon Shipmaſter in *Leith*.
Mr. Francis Garden Advocate.
James Grierſon Merchant in *Edinburgh*.
Alexander Gray Brewer at the Back of the *Canongate*, *Edinburgh*.
* Walter Hamilton one of the Captains of the City-guard of *Edinburgh*.
Patrick Henderſon Merchant in *Edinburgh*.
Charles Hope Merchant, and late Bailie there.
John Hay Wigmaker there.
Archibald Hart Merchant there.
George Home Town-Clerk of *Leith*.
John Haſtie Gardener in Heriot's Work, *Edinburgh*.
Paul Huſband Merchant in *Edinburgh*.
Archibald Inglis Pewterer there.
David Jackſon Sadler, now Overſeer of the Scavingers there.
James Ker, Eſq; Jeweller, preſent Deacon-Conveener of the Trades of *Edinburgh*, and Repreſentative in Parliament for the City.
* Francis Kemptie Merchant in *Edinburgh*.
Dr. Thomas Dundas Phyſician, Brother to Dundas of *Manor*.
Capt. Francis Kinloch, Son to the deceas'd Jacob Kinloch of *Stonyflat*.
* George Lindſay Depute Town-Clerk of *Edinburgh*.
George Langlands Surgeon there.
Deacon Patrick Lawſon Weaver there.
* George Lauder Surgeon there.
John Learmont Tanner there.
James Mansfield Merchant, and late Bailie there.

Robert Montgomery Merchant, and late Bailie of *Edinburgh*.
Charles Mack Maſon there.
William Macvey Wright there.
James Macdouall Walker there.
William Mercer Merchant there.
Ebenezer Macculloh Merchant there.
* William Macghie Merchant there.
Richard Mackenzie Vintner there.
David Murray Stabler there.
Thomas Moor Vintner there.
Samuel Neilſon Maſon there.
William Ormiſton Coppersmith there.
* Mr. Robert Pringle Advocate.
Alexander Purves Merchant in *Edinburgh*.
James Rob Merchant there.
John Robertſon Maſon there.
Willoughby Ramſay Merchant there.
* Archibald Stewart Merchant, and late Moderator of the Conſtables there.
James Scot Merchant there.
Robert Smith Surgeon there.
* Walter Scot Merchant, and Bailie in *Leith*.
Charles Sheriff Merchant there.
Alexander Sheriff Merchant there.
James Stedman Vintner in *Edinburgh*.
David Simpſon one of the Sheriff-officers there.
William Sheills one of the Sheriff-officers there.
William Scot one of the Town-officers there.
Richard Tod Merchant there.
William Trotter late Surgeon to General Hamilton's Dragoons.
John Walker Merchant in *Edinburgh*.
George Boſwell Sadler there.
William Straiton Brewer there.
Mr. Patrick Haldane Advocate, one of his Majeſty's Solicitors.
† Charles Fraſer Merchant in *Edinburgh*.
† Archibald Macaulay, Eſq; late Lord Provoſt there.
† John Wilſon Merchant, late one of the Bailies there.
† Gavin Hamilton Merchant, late one of the Bailies there.
† James Stewart Merchant, late one of the Bailies there.
† James Nimmo, Eſq; late one of the Bailies there.
† * Hugh Hathorn late Dean of Gild there.
† Robert Baillie Merchant, late one of the Bailies there.
† James Grant Merchant, and preſent Town-Treaſurer there.
† Sir Robert Dickſon, Baronet.
† The Honourable Mr. James Leſlie Advocate, one of the Commiſſaries of *Edinburgh*.
† Archibald Stevenſon Writer in *Edinburgh*.
† Nathan Porteous late Deacon of the Skinners there.
† Patrick Lindſay Depute-Secretary to the Forces in *North-Britain*.

† Robert

† Robert Griffith one of the Gunners of the Castle of *Edinburgh*.
† John Hislop Store-keeper of the City of *Edinburgh*.
† John Dalgleish Watchmaker there.
† Baillie Bryden Lieutenant of the Royal Regiment of Artillery.
† Andrew Alves Writer to the Signet.
† Thomas Dalyell one of the Captains of the City-guard, *Edinburgh*.
† Alexander Corsar one of the Soldiers of the City-guard there.
† Mr. John Glen, } both Ministers of the Gospel there.
† Mr. Alexander Webster, }
† * William Forbes one of the Principal Clerks of the City of *Edinburgh*.
† * William Henderson Writer there.
† James Murray, Esq; Receiver-General of the Customs of *Scotland*.
† James Paterson Tide-surveyor of the Customs at the Port of *Leith*.
† Mr. Robert Craigie of Glendoig, Advocate.
† Mr. Robert Dundas younger of Arniston, Advocate.
† George Dunbar Merchant, late one of the Bailies of *Edinburgh*.
† Mr. Joseph Williamson Advocate, one of the Principal Clerks of the City of *Edinburgh*.
† Robert Tennent Merchant there.
† David Lindsay Writer there.
† * John Coutts, Esq; late Lord Provost there.
† * John Yetts Merchant, and sometime one of the Bailies there.
† John Steven Merchant there.
† David Inglis Merchant, and sometime one of the Bailies there.
† Mark Sandilands Merchant, and late one of the Bailies there.
Charles Hay Tide-waiter at Dundee.

Follows the Proof adduced for the Pannel's Exculpation.

I. *John Coutts*, Esq; late Lord Provost of *Edinburgh*, depones, That the Minutes and Orders of the Town-council [admitted by the Lord Advocate, and Mr. *Lockhart* as Council for the Pannel] now shown to him, were truly and really transacted, as therein entered, and signed by the Pannel as the Lord Provost, in Presence of the Council; and that the Minutes of the Committee [in like manner admitted by the Prosecutor and Pannel] also shown to him, contain the true Proceedings

 thereof;

thereof; and the Deponent was one of that Committee. Depones, That the Reſolutions of the Council were reported to a Meeting of the Inhabitants, which was called about the latter End of *Auguſt*; which Meeting unanimouſly approved thereof, and appointed a Committee of their Number to join with the Magiſtrates to conſult with the King's Lawyers, and ſuch Judges as were in Town, touching the Legality of ſuch Meaſures as had been under Conſideration, for the Defence of the City. In Proſecution of which, there was a Meeting of the Committee, at leaſt part of them, in the Lord Juſtice-Clerk's Houſe; where his Lordſhip and the Crown-lawyers aſſiſted. That ſeveral Propoſals for the Defence of the City were under Deliberation, and particularly the raiſing of a Regiment of 1000 Men; which the ſaid Judges and Lawyers thought would amount to High Treaſon, without the Sovereign's Authority was firſt given. There was ſome Converſation how ſuch a Regiment could be maintained, if raiſed; and ſuch of the Committee of Inhabitants and Magiſtrates as were preſent, were deſired to ſound the Inclinations of the Citizens and Inhabitants, how far they would contribute to the Expence of it; and it was recommended to the Lord Advocate, to write to ſome of the King's Miniſters at *London*, to obtain his Majeſty's Royal Sign-manual for levying the ſaid Regiment. Depones, That he knows, that the Pannel, and other Magiſtrates of the City, received ſeveral Propoſals for putting the Town in a Poſture of Defence; moſt of all which were complied with; And he knows, that Letters were wrote by the Pannel to the Miniſters and Magiſtrates of neighbouring Burghs,

Burghs, to take particular Notice of the Motions of the Rebels, and inform the Magiſtrates of *Edinburgh* thereof. Depones, That, upon *Sunday* the 8th of *September*, in the Evening, or at Dinner, he heard that the King's Sign-manual was come; and a Council was held next Day, the 9th, where it was produced; and a Committee was appointed to carry it into Execution, by levying the Men, taking in Subſcriptions, and, in general, doing every other thing in relation to it. The firſt Meeting of which was appointed at the riſing of that Council, and afterwards they were ordered to meet twice a-day. Depones, That he ſubſcribed for the Maintenance of the Regiment ſometime after the reſt of the Council had ſubſcribed; and he obſerved the Pannel's Subſcription to be 20 *L. per* Month, which was higher than that of any other Subſcriber before the Deponent. Depones, That there was a Proviſion of Meal, ſufficient for the ſaid Regiment, before the Rebels entered the City of *Edinburgh*, made by the Direction of the Pannel, and other Magiſtrates; and Arms were furniſhed to the Regiment from the Arſenal in the Caſtle. Depones, That he heard Mr. *Joſeph Williamſon* complain to the Pannel, that the publick Works went ſlowly on. To which the Pannel anſwered, 'I have given Warrants 'to preſs Workmen and Carts; the Execution of 'the Work is committed to a Committee, under 'the Inſpection of Bailie *Robert Baillie*: What 'would you have me to do more?' And the Deponent knows, that Bailie *Robert Baillie* was at the Head of a Committee, who had Orders to carry on all publick Works for the Defence of the City with the greateſt Diſpatch. Depones, That, upon the Approach

Approach of the Rebels, what Ceſs was owing by the City, was paid upon *Saturday* the 14th, by the Intervention of the Pannel; at whoſe Requeſt the Deponent went down to the Royal Bank, to wait till ſuch Time as it was paid in; and the Deponent ſaw it paid; and he thinks, that the Pannel ſigned the Order for Payment of the Ceſs to the General Receiver of the Land-tax, directed to the Caſhier of the Royal Bank, to be ſtated to the Debit of the Town's Caſh-accompt. That it conſiſts with the Deponent's Knowledge, that the Pannel readily embraced a Propoſal of the Lord Juſtice-Clerk's, of having Meetings and Conſultations with ſeveral Noblemen and Gentlemen in and about the Town, to concert what was proper to be done at that Juncture; that he went to his Lordſhip, and told him, that he wanted Advice much, and would be very glad of ſuch Aſſiſtance. Depones, That he knows no further of Application made for Gunners from the *Urſula* Man of War, other than that, upon *Monday* the 16th of *September*, he ſaw a Letter lying upon the Table of the Goldſmiths Hall, which the Deponent caſually took up, and read, dated from *Leith*, ſigned by, he does not remember whom, directed either to the Pannel, or one of the City-Clerks; and bearing, That the Captain of the King's Ship in the Road could ſpare no Gunners; and that he thinks, but cannot be poſitive, it was before Dinner when he ſaw this Letter. Depones, That, about Eleven o'Clock of the ſaid 16th of *September*, the Deponent went up to the Goldſmiths Hall, where the Pannel and ſome of the Members of the Council were; or, rather, the Deponent having gone up to the Goldſmiths Hall, the

the Pannel came up to him. That the Pannel took *Hugh Hathorn* and this Deponent aſide, perhaps more of them, but he does not remember, and told them of the Meſſage *Andrew Alves* had delivered to him, in Preſence of Commiſſary *Leſlie*, touching the Strength of the Rebel-army, which *Alves* repreſented as great; and that the City would be ſubjected to military Execution, ſhould they perſiſt in the Defence of it; and aſked their Opinion, If it would be proper to take notice publickly of that Meſſage? ſuggeſting his Apprehenſion, that it might intimidate the Citizens and Inhabitants. That Mr. *Hathorn* and the Deponent gave it as their Opinion, It was better to huſh the Thing, for the Reaſon already given: And, at this Time, the Pannel being called to viſit ſome Part of the Walls, he immediately went, and the Deponent and Mr. *Hathorn* attended him, and they made a Round of a conſiderable Part of the Wall, and ended at or near the *Weſt-port*: And, when they came to the *Graſs-market*, they were told of Mr. *Alves*'s Meſſage; whereby they ſaw the ſame was made publick. Whereupon the Pannel declared his Intention to go to the Lord Advocate's Lodging, to talk with him in relation to that Matter; but, meeting with ſome Company, the Pannel walked down with the Deponent ſome way towards the *Luckenbooths*; and then parted with the Deponent; and went backwards, as he believes, to execute his Intention; nor did he obſerve any Meſſage delivered to the Pannel during this Period. He ſaw the Pannel ſoon after this, who told him he had been with the Lord Advocate; and that he had already ſigned, or was to ſign a Warrant for committing Mr. *Alves* to

Priſon.

Priſon. Depones, That, on *Monday* Afternoon, about Three o'Clock, the Pannel went from the Goldſmiths Hall, with Intention to go to the *Weſt-port*; and, about this Time, he heard of the Retreat of the Dragoons with ſome Precipitancy; and, before he left the Goldſmiths Hall, he mentioned to the Deponent, that he had received a Petition from ſeveral of the Citizens and Inhabitants, deſiring that the Town ſhould not be defended, or, at leaſt, not till a general Meeting of the Inhabitants was called to deliberate on its Defence: And the Pannel, in his Way to the *Weſt-port*, ſtepped in to the Lord Advocate's Cloſe-head, or went up to his Houſe; he thinks it was only to the Cloſe-head, he ſtaid ſo ſhort Time: The Deponent waited his Return; and in their Way to the *Weſt-port*, he told the Deponent he had ſigned a Paper, deſiring, or conſenting, that ſome Dragoons ſhould be ſent to the Aſſiſtance of the City. That, after the Pannel had given ſuch Orders at the *Weſt-port*, which he judged the Flight of the Dragoons rendered neceſſary, he left it: And, in his Return, was ſurrounded by a great Crowd of People, whoſe general Cry was, 'Would he continue his Deſign of de-'fending the Town, and have them all murdered, 'now that the Dragoons were fled?' And the Deponent obſerved, among thoſe who made this Cry, *Thomas Dundas* younger of *Lethem*, who appeared to the Deponent to be full warmer on that Head than any of the reſt, though his Brother *Laurence* declared, on the contrary Side, for the Defence of the Town. To which the Pannel replied, Would they now be guilty of Cowardice, in giving up the Town, after obtaining his Majeſty's Sign-manual,

and

and doing ſo much for its Defence? and a great deal more to that purpoſe, in anſwer to their repeated Cries. That, when the Pannel returned from the *Weſt-port* to the Goldſmiths Hall, where a good Number of the Council and many of the Inhabitants were aſſembled, it was propoſed to, and agreed by him, forthwith to ſend Deputies to the Lord Juſtice-Clerk, the Lord Advocate, and the Solicitor; and Meſſengers were ſent to each of them reſpectively, deſiring them to come and aſſiſt the Pannel with their Advice: But, ſoon after, the ſeveral Deputies returned, and reported, that all of them had left the Town. Depones, That, immediately after this, the Pannel ſent for the Officers of the Trained Bands and Voluntiers, and deſired to have their Opinion upon the Defence of the City; and addreſſed himſelf to them in Subſtance to the following purpoſe: *That he hoped they would not now ſuffer Cowardice to poiſon their Councils; and that, after obtaining his Majeſty's Royal Sign-manual, and doing ſo much with Spirit, they would not now think of giving up the Defence of the City: That, for his own part, he would go to the City-walls, and to the Place of greateſt Danger; and, ſo long as he could find ten Men to ſtand by him, he would perſevere in the Defence of it.* That ſeveral of the ſaid Officers came, and were thus ſpoke to; but few of them ſeemed to be inclined to give their Opinion, or ſpeak; but one Gentleman, Mr. *Joſeph Williamſon*, ſaid to this purpoſe, Since he ſaw the Pannel ſo firmly reſolved upon the Defence of the City, he would attend, and ſhare Fates with him; but he feared he ſhould not be able to bring with him five, ten, or ſome ſuch ſmall Number of the Company

wherein he ſerved. That the Deponent in particular remembers he preſſed Mr. *Drummond* to give his Opinion; which he declined; and, taking the Deponent aſide, ſaid, 'I am ſurpriſed, Sir, that 'you ſhould inſiſt on my giving my Opinion. You 'know I am not ſo independent a Man as you or 'the Pannel. I hold a Place of the Government, 'and it may be very inconvenient for me to deliver 'my Opinion in this Place.' That the Deponent deſired the Pannel to aſk Mr. *Drummond*'s Opinion; who ſtill declined to give it: And, as the Deponent had begun to relate Mr. *Drummond*'s Apology for not giving his Opinion, he interrupted the Deponent, and again took him aſide; and ſaid, 'I 'am ſurpriſed, Mr. *Coutts*, you ſhould inſiſt upon 'my giving my Opinion, when you know, that 'the Provoſt has the Articles of Capitulation of 'the City in his Pocket ſome Days ago;' adding, That he was told that Day at Dinner by the Earl of *Home*, that as, upon *Thurſday* preceeding, he was ſhaving or dreſſing in the Lord Juſtice-Clerk's Lodging, the Window open, he overheard the Deponent, coming up the Bank-cloſe, ſaying, What need is there to keep all this Pother or Buſtle about the Defence of the City, when the Provoſt has in his Pocket Articles of Capitulation for ſurrendering it to the Rebels? The Deponent replied, That that Tale carried very little Credibility with it; for what a ridiculous Thing was it, to imagine, that he, the Deponent, in one of the moſt publick Cloſes in Town, under the Windows of an Officer of State, ſhould be roaring out a Story of that kind. That he could himſelf give no Credit to the Story: For that, though of late there had been a Drineſs between

tween the Earl and him; yet he looked upon the Earl as a Man of Honour, that could not be capable of ſaying ſuch a Thing without any Foundation: ſo that certainly he, Mr. *Drummond*, muſt have miſtaken his Lordſhip. And the Deponent added, Mr. *Drummond*, let us not now be talking of theſe Things, till afterwards, that the Earl, you and I have occaſion to talk about it. That, after what paſt between the Pannel and the Officers of the Voluntiers, Capt. *James Murray* and Major *Thomas Cochran* came in to the Meeting; and the Pannel deſired them to give their Opinion, If, or not, the Defence of the City ſhould be continued? But both of them declined to give any, joining in Sentiment, that the Pannel, who beſt knew the Inclinations of the Citizens and the Inhabitants, was by much fitter to determine that Point than they; and that the Deciſion of it muſt ultimately land upon him. That the Pannel having again preſſed Mr. *Murray* to give his Opinion, and to figure himſelf in the Pannel's ſtead, and declare what he would do if that were the Caſe; Mr. *Murray* replied, 'I do moſt heartily pity you, my 'Lord Provoſt. I cannot, nor can any Man adviſe 'you; you muſt yourſelf decide it; and I am a-'fraid you will get very little Advice.' Depones, That, much about this Time, *Walter Groſſet*, Collector of the Cuſtoms at *Alloa*, came in to the Meeting with a Meſſage, whether in Writing or verbal, he cannot ſay, from the Lord Juſtice-Clerk, or the Lord Advocate, or both, deſiring the Pannel to give an Order for bringing ſome Dragoons in to the City. To which the Pannel anſwered, That he had already given his Conſent or Order for bringing

in 100 Dragoons at the Deſire of the Crown-lawyers; and that he could not comprehend what the Meaning was, why an Order ſhould be aſked this Day for bringing them in, after what paſt laſt Night: But their Lordſhips were beſt Judges what was for the Service of the Government: If they ſhall judge it for it, to ſend them in, they ſhall be received: But I will not now make an Order; becauſe, if I ſhould, and if they ſhould come in, and the City and they fall into the Hands of the Rebels, I might be charged to have enſnared ſo many of his Majeſty's Troops; if I ſhould refuſe to admit them, I might be blamed for rejecting a Succour which might have relieved the City: Let their Lordſhips therefore give their Deciſion, which I ſhall obey. And, as Mr. *Groſſet* was departing, the Pannel called him back, and ſaid, To prevent Miſtakes, he would ſend a written Anſwer; which accordingly he did. And the Anſwer referred to in Mr. *Craigie*'s Depoſition being ſhown to the Deponent, depones it is the Anſwer then ſent by the Pannel. Depones, That, while Bailie *David Baird* was arguing in the Goldſmiths Hall againſt defending the Town, becauſe it was not tenible, Principal *Wiſhart* and Bailie *John Wilſon* came in, and a great many others followed; and the Principal and Bailie averred, That no Man but a *Jacobite* would maintain ſuch an Opinion. Upon which ſuch a Hubbub aroſe, and ſo many People crowded into the Room, that the Deponent himſelf moved, that they ſhould adjourn to ſome larger Place, where thoſe who had a-mind to ſpeak might be better heard; and then the Cry was, *The New Kirk Iſle*; to which the Meeting adjourned. That, in

the

the Parliament-cloſe, they met a great many People in their Way, inſomuch that the Deponent was carried off his Feet by the Crowd to the South-ſide of the Statue; and the Cry of the People who ſurrounded him was, praying the Deponent to prevail with the Pannel not to draw Deſtruction upon the City by a fruitleſs Oppoſition. That the Deponent followed the Pannel and a Multitude of the Inhabitants to the New Kirk Iſle; where, at firſt, there was ſuch a Noiſe, that he could hear nothing that paſt; but the Pannel at length prevailed ſo far in quelling it, that the Deponent could hear him ſay, That the Purpoſe of that Meeting was, to conſult with them touching the Defence of the City; and made to them much the ſame Expoſtulation as he made formerly to the Captains of the Voluntiers, ſo far as the Deponent could hear. That he heard Principal *Wiſhart* move, that the Meeting might be purged of *Jacobites*. To which the Pannel, or ſome body, anſwered, It would not be eaſy to diſtinguiſh a *Jacobite* from a *Whig* by their Countenance. That the Reverend Mr. *George Logan* begun to ſpeak for the Defence of the City; but was ſoon interrupted by a great Noiſe, and a Cry, That that was impoſſible. Upon which he thinks the Pannel ſaid, 'It is im-'poſſible to collect the Voice of every one. Shall 'I put the Queſtion, Whether the City ſhall be 'defended, or not?' Upon which the Cry of the Generality was, That the City could not be defended. And at this Period a Letter was brought into the Meeting, he does not know how; but he ſaw it firſt in the Hands of Deacon *Walter Orrock*, who having broke it up, ſaid, it was ſigned *Charles P. R.*

P. R. Upon hearing of which, the Pannel forthwith ſaid, 'I cannot be Witneſs to the reading of 'this Letter,' left the Chair, and went out of the Meeting to the Goldſmiths Hall; whither ſeveral of the Council and of the Inhabitants followed him, and, among the reſt, the Deponent. That the Letter appeared again there, brought, as he believes, either by the ſaid Deacon, or *William Henderſon*, one of the Clerk's Servants. And it being propoſed by ſome that it ſhould be read, it was urged by others, That to read it, would be Treaſon. Upon which it was moved, and agreed to, That the Opinion of the Aſſeſſors ſhould be taken; who thereupon were ſent for: But it was reported they had all left the Town, except Mr. *Patrick Haldane*, who would be with them immediately. That, when he came, his Opinion was aſked, If it was proper to read the Letter, or not? and the Pannel, or ſome other Perſon, he does not remember who, told Mr. *Haldane*, it was a Letter ſigned *Charles P. R.* Upon which Mr. *Haldane* ſaid, *It was a Matter too high for him to give his Opinion in*; and immediately roſe from his Seat, and went out of the Goldſmiths Hall: The Deponent followed him to the Door, and preſſed him to give his Opinion; but he ſtill declined. And being interrogated upon the Part of the Purſuer, If the Letter was begun to be read before Mr. *Haldane* left the Hall? depones, That ſaid *William Henderſon*, upon Mr. *Haldane*'s coming in, took up and began to read the Letter; but he was immediately ſtopped, and ordered to deſiſt, by ſome Perſons in the Meeting, he does not know by whom; but Mr. *Haldane* was one of thoſe who ſtopped him, as the Deponent

nent thinks; and he believes he might have been one of them himſelf. That, upon this, the Pannel complained, That he was now alſo deſerted by his Aſſeſſors. Depones, That, after this, the Letter was begun to be read; and the Deponent, being at a little Diſtance, ſaid, What is the Meaning that this Letter is begun to be read? To which ſome one of the Meeting anſwered, That it was neceſſary it ſhould, that it might be known what Threatenings it contained againſt the City. That, a little after reading this Letter, it was propoſed by ſome one in the Meeting, who he does not remember, That a Deputation ſhould be ſent, to deſire, that, until they could make a proper Anſwer to the Letter, nothing ſhould be done againſt the City; the Intention of which was, to gain Time; the Purpoſe of the Meeting being to call the Burgeſſes and Inhabitants to deliberate upon that Affair. And accordingly, Bailie *Hamilton*, Bailie *Inglis*, Bailie *Yetts*, and Conveener *Norrie*, were ſent out with the ſaid Meſſage, about Eight o' Clock. And the Paper, marked N° 2. mentioned in the Liſt of Writings annexed to the Libel, being ſhown to him, depones, That it was the Return to the firſt Deputation. Depones, That the ſaid Paper being laid before the Meeting, then in the Laigh Council-houſe, the Pannel immediately obſerved, that there was one Condition in the Paper that he would rather die as ſubmit to, namely, the receiving the Pretender's Son as *Prince Regent of Scotland*, as he was tied by Oath to another Maſter; which appeared to be the common Opinion of the Meeting: And therefore, after a long Argument, a ſecond Deputation was agreed, and determined to be ſent out

out about Two o' Clock in the Morning; and five Deputies were ſent, whereof the Deponent was one, with Inſtructions, begging a Delay till Nine o' Clock in the Morning, to the end the Meeting might have Opportunity to converſe with the Citizens, who were then a-bed; which alſo was calculate to gain Time; which they chuſed to do, becauſe they had heard, before the Return of the firſt Deputation, that Sir *John Cope*, with the Troops under his Command, were ſeen off *Dunbar*: And the Paper, marked N° 3. in the ſaid Liſt, now ſhown to the Deponent, was the Fruit of the ſecond Deputation. That he remembers to have ſeen a Serjeant of the Caſtle, between Seven and Eight in the Evening, come in to the Meeting in Goldſmiths Hall, who delivered a Meſſage, which the Deponent did not hear; but heard it reſtated by ſome of the Members of the Meeting to be this, That General *Gueſt* ſent him, with Orders, to deſire of the Pannel an Order to ſpike up the Cannon upon the Walls of the City, and to knock off the Trunnions; and that the Deponent whiſpered to ſome of his Neighbours, That, conſidering the Threatenings in the ſaid Letter, might it not do as well to make anſwer to the Meſſage, That the Pannel could give no expreſs Order; but to acquaint the Serjeant, That the General might ſend, and render the Cannon uſeleſs; which he ſhould be at full Liberty to do? And accordingly, the Deponent, and the ſaid *William Henderſon*, deſired the Serjeant to ſpike up the Cannon himſelf, or to do with them as he pleaſed. And the Adjutant of the *Edinburgh* Regiment having come in much about this Time, to aſk how he ſhould diſpoſe

poſe of their Arms, he was alſo told, That he was at Liberty to diſpoſe of theſe Arms as he pleaſed, by the Deponent, who left it to *William Henderſon* to explain the Reaſon thereof to the Adjutant. Depones, That, being fatigued, he went to take a Refreſhment in Mrs. *Clark*'s; and during his ſhort Abſence of a Quarter of an Hour, the ſaid Mr. *Groſſet* came to the Council, which was then more regularly met than formerly, with only a few Inhabitants: And, upon his Return, he found them in the Laigh Council-houſe; and a Letter, ſent by Expreſs from Mr. *Fall* to the Deponent, which had ſome how fallen into Mr. *Groſſet*'s Hands, had been juſt then laid before the Council, and read before the Deponent came in, as he is inclined to believe, becauſe the Letter gave notice of Gen. *Cope*'s Arrival off the *May*; and he was told by ſome of the Council, That Bailie *Mansfield* had been ſent out, if poſſible, to ſtop the Deputies of the firſt Deputation from executing it. That the Letter was again read after he came in, and delivered to him. That, upon this, they begun again to conſider, if the Defence of the City might not be reſumed: And while ſome People were talking, that the Voluntiers ſhould take Arms again, and others, that the Dragoons ſhould be brought in, leaving theſe Things to be determined by the Meeting, the Deponent, Mr. *Groſſet*, and Mr. *Lindſay*, Secretary at War, were ſent to Gen. *Gueſt*, to know of him, whether if the Defence of the City ſhould be reſumed, he would deliver out Arms to the Voluntiers, and recal the Dragoons? To which he anſwered, That they might put the City-arms in the Hands of ſuch as were well diſpoſed; and, if

the Provoſt ſhould write him, that there was a good Spirit appearing in the People, and deſire him to deliver out the Volunteers Arms, probably he might do it; and that he had ſent Orders for recalling the Serjeant from rendering the Cannon uſeleſs; but that he judged it abſolutely neceſſary for his Majeſty's Service, that the Dragoons ſhould be ordered to join Gen. *Cope*, without whoſe Aſſiſtance his ſmall Body of Men could not act. That the Deponent, Meſſ. *Groſſet*, and *Lindſay*, returned to the Council. That, by the Way, Mr. *Groſſet* and the Deponent agreed, at Mr. *Groſſet*'s Requeſt, that they ſhould mention nothing of bringing in the Dragoons to the Town, becauſe it was a clear Point they could have none of them, and it might intimidate the Inhabitants if they knew ſo much. However, the Deponent judged it his Duty to whiſper the Pannel, That, for the Reaſons above aſſigned, he could not hope to have any of the Dragoons brought in. They found the Council ſtill arguing upon the ſame Subject they left them upon, ſome propoſing one Thing, ſome another, and ſome to ring the Alarm-bell. That, ſoon after this, Mr. *Webſter* ſaid, It was impoſſible to think of defending the City, without the Dragoons were brought in for its Aſſiſtance. Upon which Mr. *Groſſet* roſe up, and ſaid, 'Then I will go and 'fetch in the Dragoons;' and going to the Door, the Deponent followed him, and ſaid, 'How can 'you impoſe ſo upon the Meeting, when you know 'from Gen. *Gaeſt* that you can have none of them?' To which he replied, He could perhaps perſuade Brig. *Fowkes* to bring them in. Provoſt *Drummond* went along with Mr. *Groſſet*, and neither of them

them returned. That, immediately after this, Mr. *Lindſay* propoſed to the Pannel, to get out the Arms for the Voluntiers. To which he anſwered, That it was proper for him firſt to know what Diſpoſition there was among the Inhabitants to make uſe of them. That, as to the Propoſal of ringing the Alarm-bell, it was obſerved, and agreed to, It would be doing great Injuſtice to the Deputies, to ring it till they ſhould be returned: And Dean of Gild *Hathorn* obſerved, That if they did, they might expect to have the Deputies hanged like Rats, it being probable the Rebels were within hearing of the Bell. That the Deponent being one of the ſecond Deputation, he remembers, when they went out to the Rebel-army, they met with the late Lord *George Murray*, whom they applied to, and prevailed upon to ſecond them in procuring the Delay propoſed. That the late Lord *George Murray* went into the Room in which the Pretender's Son was; and the Deponent could hear, though indiſtinctly, ſo much of the Converſation, as convinced him, that the ſaid Lord *George* was endeavouring to perſuade the Pretender's Son to comply with it; and that he refuſed to do it; which the ſaid *George* came out, and reported to the Deputies: But, upon ſecond Converſation with them, they prevailed upon him once more, to try if he could obtain the propoſed Delay; which he accordingly attempted, but was refuſed; and the Deponent could hear the Pretender's Son ſay, 'My 'Lord *Elcho*, Lord *George* has not Spirit to put 'this Order in Execution; you muſt go and do it 'for him.' Upon which the late Lord *Elcho* came out of the Room from the Pretender's Son, and

bid the Deponent, and the reſt of the Deputies, to get them gone. That the ſaid *George Murray* followed the Deputies out, and whiſpered to the Deponent, *I know your Pinch; you want to have the Conſent of your principal Inhabitants: Make haſte to Town; you'll have an Hour or two to obtain it.* That the Deputies made all the Haſte they could to return, and went directly to Mrs. *Clark*'s; where they underſtood the Pannel and the Council were. The Pannel, who was aſleep, was rouſed. The Deputies reported their Anſwer, and what *George Murray* had ſaid. The principal Inhabitants were ordered to be gathered together immediately. Some few of them, and particularly *James Ker*, now Member of Parliament for the City, were come, when Notice was brought, that the Rebels had broke in to the Town, and made themſelves Maſters of it: Which put an End to all further Deliberation.

II. *William Forbes*, one of the Principal Clerks of the City of *Edinburgh*, depones, That, on *Monday* the 16th *September* 1745, he came to the Goldſmiths Hall about Three o'Clock in the Afternoon; where he found the Pannel, as he appeared to him, in a very great Paſſion; ſome of the Counſellors were about him, and ſeveral other of the Burghers and Inhabitants of the Town. The Deponent went up to him, and aſked him the Occaſion of the Diſorder he ſeemed to be in. The Pannel anſwered, That he had got a Paper into his Hands, which he by no means reliſhed, and thought it was ſomewhat ſeditious: For that the Scope of it was, That the Town ſhould be ſurrendered; which he

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ſwore he would not conſent to. That, at this Time, the Crowd that was in the Room called aloud upon the Pannel, to take the Advice of the Inhabitants; but he told them, that he would liſten to no Advice in a Matter of this kind, till he had taken the Opinion of abler and better Counſellors. Upon which ſeveral Perſons were ſent to all his Majeſty's Officers who uſually reſided in *Edinburgh*, humbly to beg that they would meet with them, and give their Opinion what was proper to be done in ſo critical a Juncture. That the Meſſengers ſent, returned with a Report, That they were all gone out of Town. The Pannel therefore, finding, that he could not have the Happineſs of the Counſel of the civil Officers, was reſolved to call for the Aſſiſtance of ſuch of the military Officers as were in Town, and the Officers of the Volunteers. That, upon Meſſages ſent, Major *Thomas Cochran* and Capt. *James Murray* came to the Hall, as alſo a great many of the Officers of the Volunteers. That, upon their coming in, the Pannel opened to them the difficult Circumſtances that he and the City were under at that Time, and prayed their Advice. That ſuch of the Officers of the Voluntiers as were preſent, declined giving any Advice, except Mr. *Joſeph Williamſon*; who ſaid, That, from the Beginning, he was determined to ſtand to the Defence of the City to the laſt Drop of his Blood; but that he was ſorry to ſay, that he found ſome Alterations upon the Spirits of the People: For that, in the Company in which he was an Officer, there was not above ſix or ſeven of the Voluntiers of that Company could be found. That the Pannel did, upon this Occaſion, warmly exhort

hort the People that were about him, to ſtand to the Defence of the City, repreſenting the Expence they had already laid out in order to the Defence of the City; and that they had lately plighted their Faith to his Majeſty, that they would, to the utmoſt, ſtand for the Support of his Perſon and Government, and for the Defence of the Town. The Pannel then addreſſed himſelf to Major *Cochran* and Capt. *Murray*, who were the only two of the Military that could be found; and told them, that their Advice was neceſſary in a Matter of this kind, becauſe of their Knowledge and Experience in theſe Matters. To which Capt. *Murray* replied, That he regretted extremely the unhappy Situation of Affairs in general, and the Pannel's Caſe in particular; that he pitied him, becauſe he foreſaw, that the Deciſion of this important Queſtion would chiefly lie upon him; and added, That if the Trained Bands and Voluntiers did not ſtand to their Arms in the Defence of the Town, it was a Matter of the greateſt Conſequence, that the Arms delivered out by the Government ſhould not be ſuffered to fall into the Hands of the Rebels: And then, turning about to the Deponent, ſaid, with an Oath, If they do, ſome People may come to hang for it. That Bailie *Baird* offered his Opinion; which was, That he thought the Town not tenible; as did Mr. *Thomas Dundas*, and ſeveral others: But Principal *Wiſhart*, and ſome few more, were of a different Opinion. Whereupon the Principal ſaid, None but *Jacobites* would be for ſurrendering the Town. Then enſued a loud Cry from many, That the Opinion of the Inhabitants ſhould be taken; and, for that end, it was propoſed, to adjourn to the New

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Church Iſle; where they accordingly went: But, in their Way to the New Kirk Iſle, there was loud Cries from all Corners, not to expoſe the City to the Fury of the Rebels. While the Pannel was in the Midſt of the Crowd, there came a Gentleman on Horſeback, who ſaid, He wanted to ſpeak to the Pannel; and accordingly ſpoke to him to this Effect: 'That Lt-Col. *Whitney* had ſent him back to 'bring away the Dragoons Baggage that was left in 'Town; for that the Dragoons were on their Way 'to *Haddington*.' That the Deponent did not go in at that Time to the New Church Iſle, having gone to refreſh himſelf with a little Coffee; and, when afterwards he attempted to go in, he found the New Church Iſle ſo chop-full of People, that he could not put in his Head. He then went towards the Croſs, where he met with Bailie *James Stewart*, one of the Officers of the Voluntiers, and ſeveral private Voluntiers along with him. That he had in his Hands a Key, or two Keys; which made the Deponent aſk him, What he meant? and where he was going? who replied, He was going to give up his Charge with the Keys of the *Netherbow* Port; for he found, that this Thing would not do. That thereafter the Deponent went to the Goldſmiths Hall, where, the Meeting in the New Church Iſle having been diſſolved, he found the Pannel, and a great many of the Council and Inhabitants of the Town, who were in a Diſpute, Whether a Letter, that had been given in in the New Church Iſle, ſaid to have been ſubſcribed by the Leader of the Rebels, ſhould be read, or not? The Pannel argued, That the Reading of ſuch a Letter was at leaſt bordering very near upon Treaſon;

ſon; more eſpecially if it produced an Anſwer. Upon the other hand, ſome of the Inhabitants urged, That it was proper the Contents of it ſhould be known, and they might afterwards conſider what was proper to be done on it. That the Pannel upon this ſaid, It was improper for them to come to any Reſolution, until, at leaſt, they had taken the Opinion of their Aſſeſſors; who were ſent for; but none of them were found, excepting Mr. *Patrick Haldane*. To whom the Pannel repreſented, They were under a Difficulty with regard to a Letter ſigned *Charles P. R.*; that they wanted to be adviſed, Whether it ſhould be read? and, if read, Whether it ſhould be anſwered? and what Anſwer ſhould be given? To which Mr. *Haldane* replied, It was a Matter of too high a Nature for him; and therefore he would give no Advice upon it. And upon an Interrogatory put to the Deponent for the Purſuer, Whether the firſt Mention of the Letter's being ſigned as aforeſaid, was not on Occaſion of Mr. *Haldane*'s putting a Queſtion to *William Henderſon*, (in whoſe Hands the Letter was), Who ſigned it? the Deponent, on Recollection, ſays, That he believes it was ſo. Depones, That, before the Pannel went to the New Church Iſle, Mr. *Groſſet* came to the Goldſmiths Hall, and repreſented, That he had a Meſſage from Lord Advocate, and Lord Juſtice-Clerk, to let the Pannel know, That, if he would give Orders for 100 Dragoons to enter the City, they ſhould be forthwith ſent. That the Pannel to this replied, That he could give no Orders, becauſe he had no Power over them: That he was a little ſurpriſed with the Meſſage, after what had happened in a Council of War held

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the other Night in Lord Juſtice-Clerk's Houſe; where it was concluded not to be for his Majeſty's Service that any of the Dragoons ſhould enter the City, or Words to that Purpoſe; but that, if they were of Opinion, that it was for his Majeſty's Service, and ſhould order a hundred Dragoons, or more, he would receive them, and make them very welcome, and give them all the Aſſiſtance he could in Defence of the City. That Mr. *Groſſet* inſiſted the Anſwer ſhould be taken down and given in Writing; which was accordingly done; and the Deponent thinks it was to the above Purpoſe. Depones, That, while he was in the Goldſmiths Hall, after the Meeting had come from the New Church Iſle to that Place, he thinks about the Hour of Six, or after it, a Serjeant from the Caſtle came in, and told the Pannel, he was ſent by Gen. *Gueſt*, in order to nail up the Cannon, if he would permit them ſo to do. To which the Pannel anſwered, That all Authority was wreſted out of his Hands; but that Gen. *Gueſt* might do what he thought was beſt for his Majeſty's Intereſt or Service; and ſaid, That the Town-officers would ſhow them where the Cannon were. Depones, That, after the Meeting had left the Goldſmiths Hall, and gone to the Laigh Council-houſe, the Deponent went in to them; where he ſaw two Miniſters of the City, who were reaſoning about the Surrender of the Town; and declared, that, as Things now ſtood, the Defence ſeemed impracticable: And, while this was the Subject of their Diſcourſe, Mr. *Groſſet* came in, and produced to them one Letter ſigned, but directed to no body, and another Letter, alſo directed to no body, and unſigned; the firſt

of the Letters importing, that the Troops had that Night landed at *Dunbar*; and the other, that the Fleet had been ſeen off the *May*, and would land that Night at *Dunbar*. Upon which the Pannel expreſſed great Satisfaction; and ſaid, That, as long as there was any Proſpect for defending the Town, he would not be for giving it up: But then it occurred to him, that the Voluntiers had delivered up their Arms, and it would be difficult to get them again into their Hands; and that there was no Proſpect of getting any Dragoons. Upon which a Deputation was made by the Meeting to Provoſt *Coutts* and Mr. *Lindſay*, to go along with Mr. *Groſſet* to the General, to try if he would give Orders for bringing any Dragoons into the Town, and deliver Arms to the Voluntiers. That, after they waited upon the General, the Report made by Mr. *Groſſet* was, That he would go and bring in the Dragoons; and laying hold of Provoſt *Drummond*, they both went out. Upon an Interrogatory, the Deponent recollects, That this Offer of Mr. *Groſſet*'s was immediately after the Miniſters had given their Opinion as above. However, Mr. *Coutts* reported to the Meeting, that no Dragoons could be ſpared to enter the City, ſince there was a Proſpect of Sir *John Gope* with his Troops landing; becauſe they would be of much more Service joined to the Foot that was with Sir *John*: And, as to the Arms, reported, That there was no Reaſon to hope they would be delivered out, till it appeared that the Voluntiers were more ſtable in their Reſolution of defending the City. And depones, That, when Provoſt *Drummond*, as he thinks, had propoſed to ring the Fire-bell, to convocate the Voluntiers, it was oppoſed by

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Dean of Gild *Hathorn*, for this Reaſon, That this Signal might be underſtood by the Enemy, and provoke them to uſe the Deputies ill. Depones, That, pretty late in the Evening of that Day, he was preſent in the Laigh Council-houſe; when he heard ſome People in that Meeting talking of a Meſſage to be ſent to Gen. *Preſton*; and that Mr. *Lauder* was the Man to be named for that Purpoſe. What the Meſſage was he was to be ſent on, the Deponent did not then know; but heard them aſſign for a Reaſon of the Choice of Mr. *Lauder* to be ſent to the Caſtle, That he was a near Relation of Gen. *Preſton*'s. That the Pannel, and ſome People about him, were the Perſons he obſerved buſied about the ſending of Mr. *Lauder* to the Caſtle: And when the Deponent was, from Curioſity, aſking, What the Nature of the Meſſage was? he was anſwered, That it was improper at that Time to communicate it to any Perſon: But, when Mr. *Lauder* returned from the Caſtle, upon the Deponent's aſking him what Errand he went upon, he told him, That it was to prevail upon Gen. *Preſton*, to ſend down a Party to bring up the City-arms; which he would not comply with. Depones, That, upon *Saturday* the 14th of the foreſaid Month, the Deponent, with Provoſt *Coutts*, and Mr. *Hathorn*, accompanied the Pannel while he went round the Walls, to viſit the Works that were carrying on. That, where he obſerved the Workmen diligent, he encouraged them, and told them, they ſhould be very well rewarded if they were diligent; and where he obſerved any of them that he ſuſpected to trifle with their Work, he chid and checked them; and told them, they ſhould be

paid accordingly. That, upon another Occaſion, when Complaints were made, that Materials were wanting for carrying on the Work, (whether it was the ſame Day the Walls were viſited as aforeſaid, the Deponent cannot be poſitive, not what Day it was, but that it was in the Period of Time when the City-walls and the Town were to be put in a proper Poſture of Defence againſt the Rebels), he was preſent when the Lord *Somerville* and the Pannel joined as Juſtices of the Peace, in granting a Preſs-warrant for procuring Men and Horſes for carrying the Materials, and forwarding the Work. And, upon an Interrogatory by the Proſecutor, Whether the Deponent had ever related to any Perſon whatſomever this Circumſtance of the Meſſage ſent by Mr. *Lauder*, at any Time ſince the Year 1745, down to this Day? and being, at the ſame time, deſired to recollect himſelf, and name any one to whom he had told it, the Deponent ſays, That he verily believes he had made Mention of it to ſeveral Perſons; but until it came to be a Subject to be ſpoken of in this Proſecution, he could not with Certainty ſay who the particular Perſons were: But he condeſcends on two different Perſons, Mr. *Ninian Cuningham* Writer, and Mr. *George Dunbar* Merchant, to whom he mentioned this, particularly about a Fortnight ago: Neither does he call to mind the Names of any of the Perſons who were whiſpering with the Provoſt when the Meſſage was ſaid to have been ſent up by Mr. *Lauder* at this Diſtance of Time; but that the two Miniſters he refers to in the former Part of his Depoſition, were, Mr. *Alexander Webſter* and Mr. *Patrick Cuming*.

III. *William*

III. *William Macghie*, Merchant in *Edinburgh*, depones, That he is one of thoſe who ſigned the Petition or Repreſentation which was given in to the Pannel, marked N° 8. of the Liſt of Writings ſubjoined to the Criminal Letters. That he was preſent when the ſaid Petition was delivered to the Pannel, which was juſt at the Door or Entry to the Goldſmiths Hall: That he ſeemed to be in a very great Paſſion about it; and, turning about in an angry Manner, when he had got up to the ſaid Hall, ſaid to thoſe who preſented it, 'What do you 'mean? Do you think, by Numbers, to force me to 'grant the Deſire of your Petition?' And with that forced to the Door, and turned the Deponent down the Stairs. And that this happened in the Afternoon of the 16th *September* 1745.

IV. *Francis Kemptie*, Merchant in *Edinburgh*, depones, That he was preſent, on the Afternoon of the 16th *September* 1745, when the Repreſentation, marked N° 8. of the Liſt of Writings ſubjoined to the Criminal Letters, was preſented to the Pannel in the Entry to the Goldſmiths Hall. That the Pannel was very much offended with the ſaid Repreſentation, and ſaid, 'What! do you think 'to cram your Petition down my Throat by Num-'bers?'

V. *Thomas Cochran*, Eſq; one of the Commiſſioners of Exciſe, depones, That, upon the 15th of *September* 1745, he was with Brig. *Fowkes* and ſeveral others in the Lord Juſtice-Clerk's Houſe; where the Brigadeer propoſed bringing in his Dragoons to the Town of *Edinburgh*; But this the Deponent

Deponent argued againſt, as being a Thing altogether improper, conſidering the narrow and long Lanes that lead to all the Ports of the Town. That the Brigadeer ſtill perſiſted in thinking, that the Deſign was very right; and that he could force his Way out at any one of the Gates he pleaſed. However, there was no fixed Reſolution of bringing the Dragoons to the Town, ſo long as the Deponent remained in Lord Juſtice-Clerk's Houſe. Depones, That, after the Deponent went from Lord Juſtice-Clerk's, he went to a Meeting of ſome Gentlemen in Mrs. *Clark*'s Houſe, where Capt. *James Murray*, the Pannel, and a great many others, were; and there they made a Diſpoſition of the ſeveral Corps of armed Men, into the different Parts of the Town: And the Deponent heard the Pannel give his Directions or Orders agreeable to the Diſpoſitions then made. Depones, That, upon the Afternoon of *Monday* the 16th *September*, the Deponent meeting Capt. *Murray*, he was told, That the Pannel ſent for them both to come to him, to the Goldſmiths Hall; where they both accordingly went. And, upon their going in, the Pannel deſired, firſt, That Capt. *Murray* would give his Opinion, which he accordingly did; and, afterwards, deſired the Deponent might do the ſame, which he alſo did; and which was to this Purpoſe, That it was the Duty of every one to defend the City as long as they could; and if there was a Neceſſity for their ſurrendering, then they ought to take care, that the King's Arms ſhould not fall into the Hands of the Rebels. And being interrogate, If he took any Notice of the Arms which belonged in property to the Town? depones,

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He did not; for this Reaſon, That he knew, when the Town-guard marched out that Day, as he thinks, the Officers would not accept of them to do Duty with, as knowing them to be altogether inſufficient; and, for that Reaſon, they had a new Set delivered to them. And further, he gave Advice at the above Meeting, That, in caſe the Town was puſhed, and obliged to ſurrender, and thoſe who had the King's Arms had not Time or Acceſs to deliver them into the Caſtle, that then they ſhould break them, rather than let them fall into the Hands of the Rebels. And depones, That the Pannel, upon hearing Capt. *Murray*'s and the Deponent's Opinion, ſaid to the Meeting, 'I want, 'Gentlemen, that ye ſhould alſo give me your O-'pinion; for it is by your Opinion I am to con-'duct myſelf: And, if you come to a Reſolution 'of defending the Town, I will go where-ever the 'Danger is greateſt, and defend it to the laſt.'

VI. *David Baird*, Merchant, and late one of the Bailies of *Edinburgh*, depones, That, upon the Afternoon of *Monday* the 16th of *September* 1745, he was in the Goldſmiths Hall with the Pannel, and a great many other Inhabitants of the Town of *Edinburgh*. That, while he was there, Mr. *Groſſet* came in with a Meſſage from the Lord Advocate, and Lord Juſtice-Clerk, making Offer of 40 or 50 Dragoons to the Pannel for the Defence of the Town, in caſe he thought fit to accept of them. The Pannel's Anſwer to this Propoſal was, That he would neither deſire nor give Orders for them; but, if they came, they ſhould be welcome: For, if any Accident happened to the King's Troops, they,

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and not he, ſhould be anſwerable for it. And the Deponent, upon hearing of the ſmall Number that was propoſed to be ſent, ſaid, What did 40 or 50 ſignify? if they ſent the whole, it would be ſomething; but the ſending ſuch a ſmall Number, could be to no other Purpoſe, than having their Throats cut, and the Houſes and Shops plundered. That Mr. *Groſſet* inſiſted for an Anſwer in Writing, which the Pannel complied with, by giving him a Letter to the Lord Advocate and Lord Juſtice-Clerk. Depones, That, while the Deponent was in the Goldſmiths Hall, he ſtood up, and ſpoke to the Pannel, and told, That he appeared there, not only for himſelf, but for ſeveral hundreds of the Inhabitants, whoſe All was at ſtake, and whoſe Wives and Children were in Tears; and demanded, that the Pannel would give the Inhabitants a Hearing before he came to any Reſolution for defending the Town; which, after ſome little Time, was agreed to; and that the Inhabitants were to meet in the New Church Iſle about Six o'Clock that Night; and that the Fire-bell ſhould be rung for convocating the Meeting. That the Deponent having come to that Meeting, the Pannel ſaid, That he was ſorry for the Occaſion of calling the Inhabitants together; but, as the Rebels were then come near the Town, he wanted to have their Opinion how he ſhould behave, he himſelf being willing to hazard his Life and Fortune in the Defence of the Town. To which ſeverals anſwered, That they would ſtand by his Lordſhip: But that, as the Dragoons had been ſeen running away, and the Inhabitants altogether diſpirited, they thought it more adviſeable to make the beſt Terms they could; and

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all agreed, with an Exception of one or two, not to defend the Town. And, being interrogate, Whether the Meeting in the New Church Iſle conſiſted of People well affected to the Government, and of Rank and Subſtance in the Town? depones, That he thinks they were; and that Mr. *Clarkſon* and Mr. *Keir* Baxters, Mr. *Thomas Dundas* Merchant, and ſeveral others, ſuch as theſe, were there. And, while the Deponent was there, he ſaw Bailie *Stewart* come in, and deliver up the Keys of the *Netherbow* Port; and he was deſired by the Pannel to ſtay, but he would not. That Sir *George Preſton* came there, and told, That he and his Company had been delivering their Arms into the Caſtle; and that Mr. *Glen* Miniſter came there, and ſaid, He was obliged to go away; and that a fourth Gentleman came there, and ſaid, He was obliged to go and ſee to his own Safety.

VII. *Walter Hamilton* of *Weſt-port*, one of the Captain-Lieutenants of the City-guard of *Edinburgh*, depones, That, on *Sunday* the 15th *September* 1745, he marched out with the City-guard to ſuſtain the two Regiments of Dragoons: And when the City-guard was marching betwixt *Colt* Bridge and *Bruce* Hill, he thinks, but is not poſitive, that there was ſome Stop; but does not remember by whom. However, this, upon Recollection, he remembers to have heard, That Orders were given by the Pannel to the City-guard to take their Directions and Orders from the commanding Officer of his Majeſty's Troops. Depones, That he had no particular Acceſs to examine the Condition of the City-arms; but he has heard, that they were of lit-

tle Value, and unfit for Service: And this he has heard from the Soldiers in the Town-guard who are under the Deponent's Command. And further ſays, That when the Rebels made themſelves Maſters of the City-guard, the Soldiers had been ſo harraſſed with extraordinary Duty all the preceeding Week, and by being under Arms for three Days before, alongſt and with the Dragoons, that they were hardly fit to do any Duty.

VIII. *George Lindſay*, Depute-Town-Clerk of *Edinburgh*, depones, That he commonly attends the Magiſtrates as a Clerk. That he was preſent when Application was made to the Pannel and the Magiſtrates for putting the Town in a Poſture of Defence; and was alſo preſent when particular Directions were given by the Pannel and the other Magiſtrates for carrying into Execution the general Scheme for defending the Town. And particularly knows, that Directions were given by the Pannel and the other Magiſtrates, that the Work ſhould be carried on without Intermiſſion Night and Day, *Sundays* not excepted; and Warrants were granted to impreſs Labourers and Carts: And when Complaints were made, that the Work was not going ſo ſpeedily on as the Nature of the Caſe required, ſome of the Tradeſmen were ſent for by the Pannel, and challenged for not doing out the Work they had undertaken; and ſome of them having complained, that they wanted Labourers, freſh Warrants were ſigned for impreſſing them. Depones, That, about the latter End of *Auguſt* 1745, the Pannel ſigned ſeveral Letters to the neighbouring Miniſters and Magiſtrates, and, as the Deponent thinks,

thinks, about 12 or 14 in Number, deſiring that they would ſend Notice by Expreſs on Horſeback, when they ſaw any Body or Company of armed Men marching towards the City of *Edinburgh*. Depones, That the Deponent came into the Goldſmiths Hall on the Forenoon of *Sunday* the 15th *September* 1745, where he ſaw Mr. *Hope-Weir* talking with the Pannel. That the Deponent underſtood, that Mr. *Hope* had come from Gen. *Gueſt*, to acquaint the Pannel, that a Propoſal had been made to him, that 250 of the Voluntiers were to go to the *Colt* Bridge to ſupport the Dragoons; and to deſire the Pannel, that 50 of the Town-guard ſhould go along with them. Depones, That the Pannel, at firſt hearing of this, doubted how far he could ſend the Guard out of the City; and ſaid, That that Corps were more to be depended upon than the Trained Bands. Upon which the Deponent told the Pannel, That, by the Act of Parliament conſtituting the Guard, he was allowed to ſend them a Mile from the City. And then Mr. *Baillie*, one of the Magiſtrates at that Time, ſaid, That if the Voluntiers were willing to go out to aſſiſt the Dragoons, the City-guard could not be better employed than to go along with them, as it might have the deſired Effect of obſtructing the Rebels Paſſage to *Edinburgh*; or Words to that Purpoſe. Upon which the Pannel ſaid, You are in 'the right, Mr. *Baillie*. In place of 50, the whole 'Guard ſhall go; and ſo many of the new raiſed Re-'giment as are levied.' And Orders were given, and they marched out accordingly. Depones, That, upon the 14th, the Pannel ſigned an Order for bringing into the Town all the Ladders, Ammuni-

tion and Arms that could be found in the Suburbs; and the ſame was given to an Officer, who brought in ſeveral Arms. Depones, That when Sir *Robert Dickſon*'s Voluntiers came to Town, they were ordered to one of the Kirks; and Bread and Ale was given to them by Order of ſome of the Magiſtrates. That when the Pannel came to the Goldſmiths Hall, the Deponent acquainted him of it; who ſaid, it was very well; and he hoped, they had got it ſoon enough. Depones, That, upon *Sunday*'s Evening, the Deponent underſtood, that the Pannel was in Mrs. *Clark*'s, with ſome of the Captains of the Voluntiers, who were employed in making Diſpoſitions for thoſe who were to defend the City, in caſe of any Attack. That, about Twelve o' Clock, he came to the Goldſmiths Hall, and ſaid, he was to go the grand Round; and returned therefrom about Four o' Clock. Depones, That Mr. *Fowkes* came in to the Pannel, upon *Monday* the 16th in the Morning, and ſaid to him, That as the Dragoons at *Corſtorphin* had been under Arms all Night, they would greatly ſtand in need of ſome Meat; and deſired it ſhould be provided. That, in conſequence thereof, ſome of the Magiſtrates ſent to a Butcher to provide Beef; which was provided, and, by Order of the Magiſtrates, boiled in the different Taverns of the Town. Depones, That, upon *Monday* Evening, the Deponent was in the Goldſmiths Hall, when Mr. *Griffith* and a Serjeant came from the Caſtle at different Times from Gen. *Gueſt*, deſiring the Pannel to give Orders for ſpiking the Cannon on the Walls. To which the Pannel anſwered, That he could give them no Orders; but

but that the General might give Orders for ſo doing, for there was no body to obſtruct them.

IX. *John Yetts*, Merchant, and late one of the Bailies of *Edinburgh*, depones, That, upon the Afternoon of *Monday* the 16th *September* 1745, as there was a great Stir in the Town, upon Account of the Dragoons going Eaſtward in great Haſte, the Deponent and the Pannel went to ſee the *Weſt* Port ſhut; which was accordingly done; and a Party of the City-guard and Trained Bands were poſted there. That the Deponent went from the *Weſt* Port to *Briſto* Port, and found it ſhut; and afterwards went to Goldſmiths Hall. As he came from *Briſto* Port to Goldſmiths Hall, the People on the Streets were calling after him, Why would the Magiſtrates pretend to defend the City, when the Dragoons had gone Eaſtward? He found in the Goldſmiths Hall the Pannel, ſeveral of the Magiſtrates and Council, and a great Crowd of the Inhabitants, who were crying out againſt any Attempt to defend the Town, ſince the Dragoons had gone away and left them. That the Crowd and Preſs was ſo great there, that it was reſolved to remove to the New Church Iſle; and, when they came there, the Deponent obſerved a very great Crowd of the Inhabitants and Burgeſſes; to whom the Pannel addreſſed himſelf, ſaying, That, as hitherto they had made a noble Stand for the Defence of the City, he hoped they would not now give it up: And, as for himſelf, he ſhould be the firſt Man that would mount the Walls, in caſe of Danger. That, nevertheleſs, the Deponent did not obſerve, that the Pannel's Words made any great Impreſſion upon the Audience;

ence; for the Generality of them continued to de- declare their Sentiments againſt defending the Town; and a few only ſpoke to the contrary. And being interrogate, If the Deponent was acquainted with all, or a great many of the People he ſaw there? ſays, That he was not acquainted with them all; but that he knew a great many of them, whom he always looked upon as People well affected; and ſome of them were People of good Credit and Subſtance in the City, and others of them not. Depones, That he knew there were two Deputations ſent to the Camp of the Rebels; and he himſelf was one of the Deputies; and that the great Scope of the Deputations was, to gain Time, among other Things, with a View of conſulting with the Inhabitants, what was proper to be done. That, as he returned with the firſt Deputation, he met with ſome one or other, whoſe Name he does not remember, who told him, That Bailie *Mansfield* had been diſpatched after them, upon an Information laid before the Pannel and Magiſtrates, by Mr. *Groſſet*, That Sir *John Cope*, in all Appearance, would very ſoon land; and that Bailie *Mansfield*, if he had overtaken the Deputies, was to have ſtopped them. However, coming too late, the Deputies returned with an Anſwer; wherein, among other Things, there was this Condition, That the Pretender's Son was to be acknowledged as *Prince Regent*; and, when this Condition was mentioned, the Pannel declared, That it was ſuch a Condition as he neither would nor could ſubmit to. And depones, That, in his Opinion, no Man in Life could do more for the Defence of the City than the Pannel did.

X. *Hugh*

X. *Hugh Hathorn*, Merchant, and late Dean of Gild of *Edinburgh*, a Witneſs formerly adduced in this Cauſe for the Purſuer, and now adduced and examined for the Pannel, depones, That, after the Pannel's Return from the New Church Iſle to the Goldſmiths Hall, in the Afternoon of *Monday* the 16th of *September*, the Letter from the Pretender's Son, being the firſt in the Liſt of Writings ſubjoined to the criminal Letters, was read publickly in the ſaid Goldſmiths Hall: And as it was now generally thought, there was little hopes of defending the Town, after the Voluntiers had delivered up their Arms; ſo there was little ſaid there about it. Depones, That, about the ſame time, a Meſſage was brought to the Pannel by *Robert Griffith*, deſiring an Order from the Pannel for nailing up the Cannon that were mounted on the Town-walls: To which the Pannel anſwered, That he might nail them up if he pleaſed; and a Town-officer ſhould be ſent with him, to ſhow him where they were. Depones, That, on the Evening of the ſaid 16th of *September*, after Mr. *Groſſet* had brought Advice of Sir *John Cope*'s being ſeen off *Dunbar*, he and Provoſt *Drummond* went away from Goldſmiths Hall, in order, as they ſaid, to bring back the Dragoons; but they did not return. Depones, That the two Deputations that were ſent out to the Camp of the Rebels, were, in the Deponent's Apprehenſion, intended in order to procure a Delay, and to gain Time to put the People in a better way, who were then in a great Hurry and Confuſion. And further depones, That the Pannel's Subſcription for maintaining the *Edinburgh* Regiment was *L.* 20 *per* Month; and the Depo-

nent

hent does not know that any Perſon ſubſcribed ſo much.

XI. Mr. *Robert Pringle*, Advocate, depones, That, upon *Sunday* the 15th of *September* 1745, he had been all Morning with the Voluntiers in the College-yards, till about Ten or Eleven Forenoon, after the Churches were conveened; and then they ſeparated: And the Deponent and Bailie *Stewart* came up the High Street, where they met Dean of Gild *Allan*; who informed them of a Meaſure that had been reſolved on, That 250 Voluntiers, with the Town-guard, and ſome other Troops, ſhould march out with the Dragoons, to ſupport them. That Bailie *Stewart* and the Deponent were pretty much ſurpriſed with the Meaſure, believing that the Voluntiers were not quite fit for ſuch Service; and ſuppoſing that the Gentlemen who had concerted that Meaſure were at Gen. *Gueſt*'s Lodging, Bailie *Stewart* and the Deponent reſolved to go down there, and lay their Difficulties before them. That, in the *Cannongate*, they met the Pannel and Provoſt *Drummond* coming up in a Coach together; and they ſtopped the Coach upon ſeeing the Deponent and Bailie *Stewart*: And very ſoon the intended Meaſure was ſpoken of; and Bailie *Stewart* and the Deponent began to tell them their Difficulties; and Provoſt *Drummond* ſaid, 'Gentlemen, For 'God's ſake! do not ſpoil a good Meaſure,' and deſired them to come into the Coach; which they did; and perſiſted in repreſenting the Difficulties in executing that Deſign; and the Pannel ſaid, 'Gen-'tlemen, This is no Meaſure or Propoſal of mine, 'but proceeded from a voluntary Offer of Provoſt

'*Drummond*'s,

'*Drummond*'s, which, he ſaid, would be readily 'agreed to,' or Words to that Purpoſe: And this he repeated two or three times in their way coming up to Town.

XII. *Walter Scot*, Merchant in *Leith*, depones, That, about two Days before the Rebels entered the City of *Edinburgh*, there came a Perſon to the Deponent at *Leith*, with a Letter from the Pannel, to be ſent on board the Man of War lying in the Road, and deſired that the Deponent would forward it. That it was a ſealed Letter; but the Bearer of it told the Deponent, That the Purport of it was to get Gunners to ſerve the Cannon on the Town-wall. Depones, That the Deponent forwarded the Letter, as he was deſired; and the ſame Perſon who brought it to him, came to him afterwards, and told him, he had got an Anſwer to it; which, the Deponent thinks, was addreſſed to the Pannel. Depones, That, after the Return of the foreſaid Letter, a ſecond Meſſage came to the Deponent, from the Pannel, deſiring, that a Search might be made in *Leith* for Gunners to ſerve the ſaid Cannon. That ſuch a Search was made, but no Gunners found, except one *Macgill*, Commander of a Cuſtomhouſe-boat; and he was ſent up to Town.

XIII. *William Henderſon*, Writer, a Witneſs formerly adduced in this Cauſe for the Purſuer, and now adduced and examined for the Pannel, depones, That, upon *Sunday* the 15th of *September* 1745, the Pannel concurred with Lord *Somerville*, in granting a Preſs-warrant for preſſing Men and

Carts, to carry Materials for repairing the City-walls. Depones, That the ſecond Week of the ſaid Month of *September*, the Pannel granted a Warrant for ſearching, ſeizing, and carrying into the Town, all ſuch Arms and Ladders as ſhould be found in the Suburbs adjoining to the Town. Depones, That, on *Sunday* Morning the 15th *September*, the Deponent was ordered by the Pannel, to go to the City-guard, and get 24 Men of the Guard-ſoldiers and *Edinburgh* Regiment, to aſſiſt *Baillie Bryden* in mounting the Cannon on the City-walls. Depones, That, upon *Sunday* the 15th of *September*, the Pannel, at the Deſire of Gen. *Gueſt*, upon being adviſed by him, That 250 Voluntiers had agreed to go out with the Dragoons to *Corſtorphin*, to ſuſtain them, ordered out the whole Men of the City-guard, and 50 Men of the *Edinburgh* Regiment, on the ſame Service. That, at Two o' Clock Afternoon, the Deponent heard Mr. *Forreſt* and Bailie *Mansfield* report to the Provoſt, That they had delivered his Meſſage to Gen. *Gueſt*, who ſaid, He was ſurpriſed that the Voluntiers had not marched out with the Dragoons; and, had he known that they would not, he ſhould not have ordered *Hamilton*'s Regiment to decamp from *Leith* to *Corſtorphin*, but would have ordered *Gardiner*'s to march from *Corſtorphin* to the Links of *Leith*. Upon which the Pannel ſaid, 'The Blame ſhall not 'lie at my Door;' and immediately ſent the Deponent, with Orders for the City-guard, and the 50 of the *Edinburgh* Regiment, inſtantly to join the Dragoons, and to take their Orders from the commanding Officer of the Dragoons. That the Deponent immediately went out, and found the City-

City-guard and *Edinburgh* Regiment in a Field betwixt the *Colt* Bridge and *Bruce-hill*, with their Arms grounded; and the Deponent told them the Orders he had from the Pannel. Depones, That Capt. *Dalyell* then told the Deponent, That a Serjeant and 16 Men had been left at the Court of Guard; and that, if any thing ſhould happen, it would be proper that they ſhould be ſent after them: And, upon the Deponent's reporting this to the Pannel, he immediately ordered the Serjeant and 16 Men to follow their Corps; and the Guard was ſupplied with 28 Conſtables. That, at the Deponent's Return from the *Colt* Bridge, which was about Five at Night, he found the Pannel in the Goldſmiths Hall. That, betwixt Seven and Eight, the Deponent called at Lord Juſtice Clerk's, and was there told, the Pannel was in that Houſe. That, betwixt Nine and Ten, he ſent for the Deponent to Mrs. *Clark*'s, to write out the Orders for the ſeveral Guards. That from thence the Pannel went to Goldſmiths Hall, and, after Twelve at Night, went the Grand Round. Depones, That, upon *Monday* about Ten o' Clock, a Meſſage came to the Provoſt, ſignifying, that the Dragoons wanted Proviſions. Upon which the Pannel immediately ſent for Mr. *Steedman* Vintner, and ordered him forthwith to provide as much Beef and Cheeſe as ſhould be neceſſary for them. That, about Eleven o' Clock, Col. *Clayton* came to the Pannel, complaining, that no Victuals had been ſent them. Upon which the Pannel immediately ſigned Preſs-warrants, for impreſſing Carts to carry out Proviſions, and to go to the Fleſh-market and Cheeſemongers Shops, and take as much Cheeſe and Beef

as was neceſſary, and get the Beef boiled in ſeveral Taverns; and recommended it to the Deponent to ſee theſe Orders executed: Which the Deponent accordingly did; and Bailie *Gavin Hamilton* went along with him. Depones, That, after Mr. *Groſſet* had, on *Monday* Evening, brought the News of Sir *John Cope*'s being ſeen off *Dunbar*, and, as the Deponent thinks, about Seven o' Clock of that Evening, the Pannel ſent the Deponent to the Guard at the *Netherbow* Port, which was then a Serjeant's Guard, Part of the City-guard, with Orders to allow no body to go out or come in at the Port. That the Deponent went accordingly, and delivered his Orders to the Serjeant of the Guard, whoſe Name was *Riddel*.

XIV. *George Lauder*, Surgeon in *Edinburgh*, depones, That, on *Monday* Evening the 16th *September* 1745, about Seven or Eight of the Clock at Night, (he is ſure it was not then quite dark), the Provoſt, and a good many of the Town-council, being then conveened in the Council-chamber, the Provoſt, now Pannel, ſaid to them, Gentlemen, I think it would be proper to take Advice of the Officers of the Caſtle, or to let the Officers of the Caſtle know the Situation we are in by the Letter we have received from the Rebels Camp, threatening military Execution in caſe we ſhould put out of the Way any of our Arms or military Stores, and to ſee if they ſhall think proper to do any thing. Upon which one in the Company ſaid, That the Deponent would be a proper Perſon to be ſent with ſuch a Meſſage to Gen. *Preſton*, becauſe of his Relation to him. Upon which the Pannel directed

the

the Deponent to go to the Caſtle, and acquaint Generals *Preſton* or *Gueſt* of the Situation the Provoſt and Magiſtrates were in, in reſpect of the ſaid threatening Letter, on account whereof they durſt do nothing themſelves with the Arms or military Stores; and to ſee whether theſe Generals would think proper to do any thing in it. That, when this Meſſage was propoſed, and agreed to, there were preſent in the Council-chamber, beſides the Pannel, and the Deponent, Mr. Treaſurer *Forreſt*, as the Deponent thinks, and Mr. *Orrock*, and ſeveral other Members of the Council, whoſe Names the Deponent cannot recollect, and Mr. *William Forbes* one of the Principal Clerks, and Mr. *Lindſay* Depute-Clerk; and the Meſſage was propoſed, and agreed to openly, and above board. That the Deponent went immediately up to the Caſtle; and, in the Way, paſſed Enſign *Roberton*, and a Party of the Caſtle-ſoldiers, ſtanding a little above the Weigh-houſe. That, when he came to the Caſtle, the Deponent called firſt at Gen. *Preſton*, but was told, That he was gone to Bed; and from thence he went to Gen. *Gueſt*, and began to deliver him his Meſſage from the Provoſt and Council, of the hard Situation they were in, by reaſon of the foreſaid threatening Letter, in caſe they ſhould put out of the Way any of their Arms or military Stores; and then the General cut him ſhort, and ſaid, What, then? Do you intend to deliver up your Arms to the Rebels? No, General, anſwered the Deponent; had that been our Intention, I had not come here; but I am ſent to acquaint you of the Terror the Inhabitants are in; and that we dare not do any thing ourſelves, for fear of military Execution: and

therefore,

therefore, if any thing occurs to you, you may do it; or Words to that Purpoſe. The General anſwered, And what would you have me to do? Will your Provoſt give me a written Order to ſend a Party for the Arms? No, replied the Deponent; that is what neither he nor the Council can do; for that would be conſtructed the ſame thing as if they did it themſelves. That the General appeared to be in a Paſſion, and ſaid, That is like the reſt of your Provoſt's Conduct; I will ſend no Party, unleſs he ſend me a written Order. And then *Robert Griffith* came in, and told the General, That the Party with Enſign *Roberton* were in the Streets, waiting his Orders. Then, ſaid he, recal the Party, for the Provoſt will give me no written Order; and, unleſs he give me one, I will ſend no Party. Depones, That he now alſo recollects another Expreſſion he had to the General, to wit, That, though we dare give you no written Order; yet, if you will ſend a Party, I don't believe that any of thoſe who are poſſeſſed of the Arms will refuſe to deliver them. That the Deponent returned from the Caſtle to the Council-chamber, and reported to the Pannel, and the other Perſons preſent, openly, and above board, the whole that had paſſed betwixt Gen. *Gueſt* and him; and remembers, that the Pannel ſaid, I hope you took care to hint to the General, that he might ſend a Party if he had a-mind; or Words to that Purpoſe. And further depones, That Mr. *Griffith* firſt went away from the General, and the Deponent immediately followed him; and, juſt as the Deponent was coming away, the General ſaid, What do you intend to do with your Cannon? the Deponent anſwered, 'I

'fear,

'fear, General, they muſt run the ſame Fate with 'the reſt.' And the General replied, I don't believe they are of much Uſe. And, being interrogate by the Purſuer, depones, That the Matters above deponed upon, happened, in Point of Time, before the Meſſage that Mr. *Groſſet* and Mr. *Coutts* were ſent with to the Caſtle. And, being further interrogate, depones, He does not remember, whether there was any Converſation in the Council afterwards, when Mr. *Groſſet* and Provoſt *Drummond* were there, upon the Subject of the City-arms.

XV. *Archibald Stewart*, Merchant in *Edinburgh*, depones, That he was Præſes of the Society of Conſtables in the Year 1745. That, on *Sunday* the 15th *September*, in the Evening, the Pannel ſent the Deponent, with a ſigned Order, addreſſed to Mr. *Lyon* Store-keeper of the Caſtle, for Matches for the Uſe of the Cannon mounted on the City-walls; by virtue of which he received from him two Coils of Matches, for which he granted his Receipt on the Back of the Order; which was left in Mr. *Lyon*'s Hands; which Coils he forthwith brought down, and delivered into the Goldſmiths Hall. That a very little while after this, by virtue of another ſigned Order from the Pannel, he ſearched a waſte Houſe, in the *Lawn-market*, belonging to one Mr. *Norvel*, for Arms and treaſonable Papers, which were ſuſpected to be in it; but which, after a careful Search, was found to be a Miſinformation. That, upon *Monday* Afternoon, the 16th *September*, about Three o' Clock, he attended the Pannel from the Head of *Forreſter*'s Wynd to the *Weſt* Port; at

at which Place he the Pannel viſited the Barricadoes; and deſired the Deponent to get up upon the Town-wall, to look out for 100 Dragoons, which he expected in Town, for the Defence of the City: Which accordingly the Deponent did; and remained there for about a Quarter of an Hour; and when he came down, deſired one of the Captains of the Guard, to ſend up two of his Men to keep the ſame Look-out, that the Ports might be readily opened when the Dragoons appeared; and thereafter attended the Pannel in his Return from the *Weſt* Port, from whence he intended to go to *Briſto* Port: But, in his Way, he was accoſted by Mr. *Thomas Dundas* younger of *Lethem*; who deſired to know of the Pannel, if he intended to perſiſt in the Defence of the City? and ſaid, That he did not aſk this out of a vain Curioſity, but at the Deſire of ſeveral ſubſtantial Inhabitants of the City, whoſe Lives and Fortunes were at Stake, and who, as well as himſelf, would take their Meaſures according to his Reſolution. To which the Pannel replied, 'You know, Mr. *Dundas*, That, at the 'Deſire of the principal Inhabitants of this City, I 'wrote to *London* for Arms to be put in the Hands 'of the Citizens for the Defence of the City; with 'what Grace then can I, without ſtriking a Stroke, 'deſiſt from defending it? No, Sir; I am deter-'mined I will not; and will take that Place on the 'Town-walls which I poſſeſs at the Council-table.' Soon after which the Pannel came up to Town.

Then the Pannel declared, that as he was of Opinion he had fully proved his Defences, he would not trouble the Court with any further Proof.

The

Saturday 31ſt *October* 1747, betwixt Five and Six o'Clock in the Morning.

'The Lords Commiſſioners of Juſticiary, ordain the Aſſize immediately to incloſe in this Place, and to return their Verdict againſt *Monday* next, at Ten o'Clock Forenoon, in this Court-houſe; and ordain the haill fifteen Aſſizers to be then preſent, each under the Pain of Law, and the Pannel alſo to be preſent ſaid Time, under the Pain of Law.'

Lord *Strichen* Præſes. *Curia juſticiaria S. D. N. Regis, tenta in nova ſeſſionis domo burgi de Edinburgh, ſecundo die menſis Novembris* 1747, *per Honorabiles viros Magiſtros Alexandrum Fraſer de Strichen, Patricium Grant de Elchies, Carolum Areſkine de Tinwald, & Hugonem Dalrymple de Drummore, Commiſſionarios Juſticiarii dict. S. D. N. Regis.*

Curia legitimè affirmata.

Intran.

Archibald Stewart of the City of *Edinburgh*, Merchant, and late Lord Provoſt of the ſaid City, Pannel, indicted and accuſed as in the former Sederunt.

The Perſons who paſſed upon the Aſſize of the Pannel returned their Verdict, in Preſence of the ſaid Lords; whereof the Tenor follows, *viz.*

'At *Edinburgh*, the Thirty firſt Day of *October* 'One thouſand ſeven hundred and forty ſeven Years, 'The Aſſize having incloſed, did make choice of

'Sir *Alexander Nisbet* to be their Chancellor, and 'John *Nisbet* to be their Clerk; and having con-'sidered the criminal Libel, purſued at the Inſtance 'of *William Grant* of *Preſtongrange*, Eſq; his Ma-'jeſty's Advocate, for his Majeſty's Intereſt, againſt '*Archibald Stewart* of the City of *Edinburgh*, Mer-'chant, and late Lord Provoſt of the ſaid City, 'Pannel, with the Lords Commiſſioners of Juſti-'ciary their Interlocutor thereon, and Writs pro-'duced, and Depoſitions of the Witneſſes adduced 'for proving thereof, with the Proof adduced for 'the Pannel's Exculpation: they, *nemine contra-'dicente*, find the Pannel *Not guilty*. In witneſs 'whereof, their ſaid Chancellor and Clerk have, in 'their Names, ſubſcribed theſe Preſents, Place and 'Date foreſaid.' *Signed*,

ALEX. NISBET, *Ch.*
JO. NISBET, *Clk.*

'The Lords Commiſſioners of Juſticiary, in re-'ſpect of the foregoing Verdict of Aſſize, aſſoilzie 'the ſaid *Archibald Stewart ſimpliciter*, and diſmiſs 'him from the Bar.'

Signed, ALEX. FRASER, *I. P. D.*

'The Lords taking into Conſideration, that the 'fifteen Aſſizers, who had paſſed upon the Trial 'of *Archibald Stewart*, Eſq; late Lord Provoſt of *Nota*, The Jury ſat till Five o' Clock *Saturday* Evening. '*Edinburgh*, had undergone a 'great Fatigue, by no leſs Attend-'ance than ninety four Hours; 'and being of Opinion, that, on this Account, 'they ſhould be exeemed from being ſummoned as 'Aſſizers to paſs upon Trials before this Court for

'ſome

'ſome time to come; they therefore recommend to,
'and appoint the Clerks of Court, that, when the
'Judges make up Liſts of Aſſize, they put them
'in mind not to inſert any of the ſaid fifteen their
'Names, in any Roll or Liſt of Aſſize for the
'Space of five Years from the Date of theſe Pre-
'ſents.'

Signed, ALEX. FRASER, *I. P. D.*

Extracted from the Books of Adjournal of the High Court of Juſticiary, by me *John Davidſon* Principal Clerk of the ſaid Court.

Signed, Jo. DAVIDSON, *Clerk.*

Robert Meek April 29th 1769

Lord Justice Clerk in
Milln. Sqr

Lord Justice Clerk in
Milln. Sqr